The International Court of Justice

Handbook

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Foreword

The role of the International Court of Justice (ICJ), which has its seat in The Hague (Netherlands), is to settle in accordance with international law disputes submitted to it by States. In addition, certain international organs and agencies are entitled to call upon it for advisory opinions. Also known as the "World Court", the ICJ is the principal judicial organ of the United Nations. It was set up in June 1945 under the Charter of the United Nations and began its activities in April 1946.

The ICJ is the highest court in the world and the only one with both general and universal jurisdiction: it is open to all Member States of the United Nations and, subject to the provisions of its Statute, may entertain any question of international law.

The ICJ should not be confused with the other — mostly criminal — international judicial institutions based in The Hague, which were established much more recently, for example the International Criminal Tribunal for the former Yugoslavia (ICTY, an *ad hoc* court created by the Security Council) or the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system). These criminal courts and tribunals have limited jurisdiction and may only try individuals for acts constituting international crimes (genocide, crimes against humanity, war crimes).

The purpose of the present handbook is to provide, without excessive detail, the basis for a better practical understanding of the facts concerning the history, composition, jurisdiction, procedure and decisions of the International Court of Justice. In no way does it commit the Court, nor does it provide any interpretation of the Court's decisions, the actual texts of which alone are authoritative.

This handbook was first published in 1976, with a second edition in 1979, a third in 1986, a fourth in 1996, on the occasion of the fiftieth anniversary of the Court's inaugural sitting, and a fifth in 2004. The handbook does not constitute an official publication of the Court and has been prepared by the Registry, which is alone responsible for its content.

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The International Court of Justice is to be distinguished from its predecessor, the Permanent Court of International Justice (1922-1946, see below pp. 12-15). To avoid confusion in references to cases decided by the two Courts, an asterisk (*) has been placed before the names of cases decided by the Permanent

Court of International Justice. The abbreviations ICJ and PCIJ are used respectively to designate the two Courts.

For statistical purposes, cases which were entered in the Court's General List prior to the adoption of the 1978 Rules of Court (see below p. 17) are included, even when the application recognized that the opposing party declined to accept the jurisdiction of the Court. Since the adoption of the 1978 Rules of Court, such applications are no longer considered as ordinary applications and are no longer entered in the General List; they are therefore disregarded in the statistics, unless the State against which the application was made consented to the Court's jurisdiction in the case.

The information contained in this handbook was last updated on 31 December 2013.

The regions into which the States of the globe are divided in this handbook correspond to the regional groupings in the General Assembly of the United Nations.

For all information concerning the Court, please contact:

The Registrar of the International Court of Justice,
Peace Palace,
2517 KJ The Hague, Netherlands
(telephone (31-70) 302 23 23;
fax (31-70) 364 99 28;
e-mail: information@icj-cij.org)

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1. History

The creation of the Court represented the culmination of a long development of methods for the pacific settlement of international disputes, the origins of which can be said to go back to classical times.

Article 33 of the United Nations Charter lists the following methods for the pacific settlement of disputes between States: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements, to which good offices should also be added. Among these methods, certain involve appealing to third parties. For example, mediation places the parties to a dispute in a position in which they can themselves resolve their dispute thanks to the intervention of a third party. Arbitration goes further, in the sense that the dispute is in fact submitted to the decision or award of an impartial third party, so that a binding settlement can be achieved. The same is true of judicial settlement, except that a court is subject to stricter rules than an arbitral tribunal in procedural matters, for example. Historically speaking, mediation and arbitration preceded judicial settlement. The former was known, for example, in ancient India, whilst numerous examples of the latter are to be found in ancient Greece, in China, among the Arabian tribes, in the early Islamic world, in maritime customary law in medieval Europe and in Papal practice.

The modern history of international arbitration is, however, generally recognized as dating from the so-called Jay Treaty of 1794 between the United States of America and Great Britain. This Treaty of Amity, Commerce and Navigation provided for the creation of three mixed commissions, composed of American and British nationals in equal numbers, who were tasked with settling a number of outstanding questions between the two countries which it had not been possible to resolve by negotiation. Whilst it is true that these mixed commissions were not strictly speaking organs of third-party adjudication, they were intended to function to some extent as tribunals. They re-awakened interest in the process of arbitration. Throughout the nineteenth century, the United States and the United Kingdom had recourse to them, as did other States in Europe and the Americas.

The *Alabama Claims* arbitration in 1872 between the United Kingdom and the United States marked the start of a second, and still more decisive, phase in the development of international arbitration. Under the Treaty of Washington of 1871, the United States and the United Kingdom agreed to submit to arbitration claims by the former for alleged breaches of neutrality by the latter during the American Civil War. The two countries set out certain rules governing the duties of neutral governments that were to be applied by the tribunal, which they agreed should consist of five members, to be appointed respectively by the Heads of State of the United States, the United Kingdom, Brazil, Italy and Switzerland, the last three States not being parties to the case. The award of the arbitral tribunal ordered the United Kingdom to pay compensation, and the latter duly complied. The proceedings served as a demonstration of the effectiveness of arbitration in the settlement of a major dispute and it led during the latter years of the nineteenth century to developments in various directions, namely:

- a sharp growth in the practice of inserting clauses in treaties providing for recourse to arbitration in the event of a dispute between the parties;
- the conclusion of general arbitration treaties for the settlement of specified classes of inter-State disputes;
- efforts to construct a general law of arbitration, so that countries wishing to have recourse to this means of settling disputes would not be obliged to agree each time on the procedure to be adopted, the composition of the tribunal, the rules to be followed and the factors to be taken into consideration in rendering the award;
- proposals for the creation of a permanent international arbitral tribunal in order to obviate the need to set up a special *ad hoc* tribunal to decide each dispute.

The Permanent Court of Arbitration was founded in 1899

The Hague Peace Conference of 1899 marked the beginning of a third phase in the modern history of international arbitration. The chief object of the Conference, in which — a remarkable innovation for the time — the smaller States of Europe, some Asian States and Mexico also participated, was to discuss peace and disarmament. It ended by adopting a Convention on the Pacific Settlement of International Disputes, which dealt not only with arbitration but also with other methods of pacific settlement, such as good offices and mediation. With respect to arbitration, the 1899 Convention provided for the creation of permanent machinery which would enable arbitral tribunals to be set up as desired and would facilitate their work. This institution, known as the Permanent Court of Arbitration (PCA), consisted in essence of a panel of jurists designated by each country acceding to the Convention — each such country being entitled to designate up to four — from among whom the members of each arbitral tribunal could be chosen[1]. The Convention further created a permanent Bureau, located at The

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[1] Countries that have signed the Convention are commonly referred to as "Member States of the Permanent Court of Arbitration" and the jurists appointed by them as "members of the Permanent Court of Arbitration".

Hague, with functions corresponding to those of a registry or a secretariat, and it laid down a set of rules of procedure to govern the conduct of arbitrations. It will be seen that the name "Permanent Court of Arbitration" is not a wholly accurate description of the machinery set up by the Convention, which represented only a method or device for facilitating the creation of arbitral tribunals as and when necessary. Nevertheless, the system so established was permanent and the Convention as it were "institutionalized" the law and practice of arbitration, placing it on a more definite and more generally accepted footing.

The PCA was established in 1900 and began operating in 1902. A few years later, in 1907, a second Hague Peace Conference, to which the States of Central and Southern America were also invited, revised the Convention and improved the rules governing arbitral proceedings. Some participants would have preferred the Conference not to confine itself to improving the machinery created in 1899. The United States Secretary of State, Elihu Root, had instructed the United States delegation to work towards the creation of a permanent tribunal composed of judges who were judicial officers and nothing else, who had no other occupation, and who would devote their entire time to the trial and decision of international cases by judicial methods. "These judges", wrote Secretary Root, "should be so selected from the different countries that the different systems of law and procedure and the principal languages shall be fairly represented". The United States, the United Kingdom and Germany submitted a joint proposal for a permanent court, but the Conference was unable to reach agreement upon it. It became apparent in the course of the discussions that one of the major difficulties was that of finding an acceptable way of choosing the judges, none of the proposals made having managed to command general support. The Conference confined itself to recommending that States should adopt a draft convention for the creation of a court of arbitral justice as soon as agreement was reached "respecting the selection of the judges and the constitution of the court". Although this court never became a reality, the draft convention enshrined certain fundamental ideas that some years later were to serve as a source of inspiration for the drafting of the Statute of the Permanent Court of International Justice (PCIJ). The court of arbitral justice, "composed of judges representing the various judicial systems of the world, and capable of ensuring continuity in arbitral jurisprudence" was to have had its seat at The Hague and to have had jurisdiction to entertain cases submitted to it pursuant to a general treaty or in terms of a special agreement. Provision was made for summary proceedings before a special delegation of three judges elected annually and the convention was to be supplemented by rules to be determined by the court itself.

Notwithstanding the fate of these proposals, the PCA, which in 1913 took up residence in the Peace Palace that had been built for it from 1907 to 1913 thanks to a gift from Andrew Carnegie, has made a positive contribution to the development of international law. Among the classic cases that were decided before the

Second World War through recourse to its machinery, mention may be made of the *Manouba* and *Carthage* cases (1913) and of the *Timor Frontiers* (1914) and *Sovereignty over the Island of Palmas* (1928) cases. For a long while thereafter, the PCA experienced a significant lull in its activity, perhaps due in part to the establishment of the PCIJ and its successor, the ICJ.

In the 1990s, however, the PCA underwent something of a revival. Today, a large number of cases are pending before its machinery, involving a wide variety of disputes between various combinations of States, State entities, international organizations and private parties. Recent inter-State disputes in which the PCA has acted as registry include the case between Eritrea and Yemen concerning questions of territorial sovereignty and maritime delimitation (1998 and 1999); the *Boundary Commission* (2008) and *Claims Commission* (2009) cases between Eritrea and Ethiopia concerning, respectively, the delimitation of their boundary and various claims of compensation following hostilities between them; the arbitration between Ireland and the United Kingdom (2008) under the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR); the *Indus Waters Kishenganga* arbitration between Pakistan and India; and various arbitrations under Annex VII of the 1982 United Nations Convention on the Law of the Sea, including an environmental dispute in the *Mox Plant* case between Ireland and the United Kingdom (2008) and several maritime delimitations: *Barbados/Trinidad and Tobago* (2006), *Guyana/Suriname* (2007) and *Bangladesh/India* (since 2010). The PCA also acted as registry in the boundary dispute between the Government of Sudan and the Sudan People's Liberation Movement/Army (2009).

Disputes between private parties and States or State entities have long been part of the PCA's mandate, starting with the *Radio Corporation of America v. China* arbitration in 1935, the first of its kind. Investment disputes between private parties and host States under bilateral and multilateral investment treaties currently constitute about two-thirds of the PCA's arbitrations.

The PCIJ (1922-1946) was created by the League of Nations

Article 14 of the Covenant of the League of Nations gave the Council of the League responsibility for formulating plans for the establishment of a Permanent Court of International Justice, such a court to be competent not only to entertain any dispute of an international character submitted to it by the parties to the dispute, but also to give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

It remained for the League Council to take the necessary action to give effect to Article 14. At its second session early in 1920, the Council appointed an Advisory Committee of Jurists to submit a report on the establishment of the

PCIJ. The Committee sat in The Hague, under the chairmanship of Baron Descamps (Belgium), a renowned statesman and academic. In August 1920, a report containing a preliminary draft statute for the future Court was submitted to the Council, which, after making certain amendments, transmitted it to the First Assembly of the League of Nations, which opened at Geneva in November of that year. The Assembly instructed its Third Committee to examine the question of the Court's constitution. In December 1920, after an exhaustive study of the latter by a sub-committee, the Committee submitted a revised draft to the Assembly, which was unanimously adopted and which became the Statute of the PCIJ. The Assembly took the view that a vote alone would not be sufficient to establish the PCIJ and that each State represented in the Assembly would formally have to ratify the Statute. In a resolution of 13 December 1920, it called upon the Council to submit to the members of the League of Nations a protocol adopting the Statute and decided that the Statute should come into force as soon as the protocol had been ratified by a majority of Member States. The protocol was opened for signature on 16 December. By the time of the next meeting of the Assembly, in September 1921, a majority of the members of the League had signed and ratified the protocol. The Statute thus entered into force. It was revised only once, in 1929, the revised version coming into force in 1936.

Among other things, the new Statute resolved the previously insurmountable problem of the election of the members of a permanent international tribunal: it provided that the judges were to be elected concurrently but independently by the Council and the Assembly of the League, and that those elected "should represent the main forms of civilization and the principal legal systems of the world". Simple as this solution may now seem, in 1920 it was a considerable achievement to have devised it. The first elections were held on 14 September 1921. Following steps taken by the Netherlands Government in the spring of 1919, it was decided that the PCIJ should have its permanent seat at the Peace Palace in The Hague. It was accordingly in the Peace Palace that on 30 January 1922 the Court's preliminary session devoted to the elaboration of the Court's Rules opened, and it was there too that its inaugural sitting was held on 15 February 1922, with the Dutch jurist Loder as President.

The PCIJ was thus a working reality. The great advance it represented in the history of international legal proceedings can be appreciated by considering the following:

— Unlike arbitral tribunals, the PCIJ was a permanently constituted body governed by its own Statute and Rules of Procedure, fixed beforehand and binding on all parties having recourse to the Court.

— It had a permanent Registry which, *inter alia*, served as a channel of communication with governments and international bodies.

— Its proceedings were largely public and provision was made for the publication of the written pleadings, of verbatim records of the sittings and of all documentary evidence submitted to it.

— As a permanent tribunal, it was able to develop a constant practice and maintain a certain continuity in its decisions, thereby contributing to both legal certainty and the development of international law.

— In principle the PCIJ was accessible to all States for the judicial settlement of their international disputes and they were able to declare beforehand that, for certain classes of legal disputes, they recognized the Court's jurisdiction as compulsory in relation to other States accepting the same obligation.

— The PCIJ was empowered to give advisory opinions on any dispute or question referred to it by the League of Nations Council or Assembly.

— The Court's Statute specifically listed the sources of law it was to apply in deciding contentious cases and giving advisory opinions, without prejudice to the power of the Court to decide a case *ex aequo et bono* if the parties so agreed.

— The PCIJ was more representative of the international community and of the major legal systems of the world than any previous international tribunal.

Although the PCIJ was brought into being through, and by, the League of Nations, it was nevertheless not formally a part of the League. There was a close association between the two bodies, which found expression *inter alia* in the fact that the League Council and Assembly periodically elected the Members of the Court and that both the Council and Assembly were entitled to seek advisory opinions from the Court. Moreover, the Assembly adopted the Court's budget. But the Court never formed an integral part of the League, just as the Statute never formed part of the Covenant. In particular, a Member State of the League of Nations was not by this fact alone automatically a party to the Court's Statute.

Between 1922 and 1940 the PCIJ dealt with 29 contentious cases between States and delivered 27 advisory opinions. At the same time, several hundred treaties, conventions and declarations conferred jurisdiction upon it over specified classes of disputes. Thus, any doubts that might have existed as to whether a permanent international judicial tribunal could function in a practical and effective manner were dispelled. The Court's value to the international community was demonstrated in a number of ways. First, it developed a true judicial technique, which found expression in the Rules of Court, drawn up by the PCIJ in 1922 and subsequently revised on three occasions: in 1926, 1931 and 1936. Mention should also be made of the PCIJ's Resolution concerning the Judicial Practice of the Court, adopted in 1931 and revised in 1936, which laid down the internal procedure to be applied during the Court's deliberations on each case. In addition, whilst helping to resolve some serious international disputes, many of them consequences of the First World War, the decisions of the PCIJ often clarified previously unclear areas of international law or contributed to its development.

The ICJ is the principal judicial organ of the United Nations

The outbreak of war in September 1939 inevitably had serious consequences for the PCIJ, which had already for some years been experiencing a period of diminished activity. After its last public sitting on 4 December 1939, the PCIJ did not deal with any judicial business and no further judicial elections were held. In 1940, the Court removed to Geneva, a single judge remaining at The Hague, together with a few Registry officials of Dutch nationality.

The upheavals of war led to renewed thought about the future of the Court and the creation of a new international legal order. In 1942, the United States Secretary of State and the Foreign Secretary of the United Kingdom declared themselves in favour of the establishment or re-establishment of an international court after the war, and the Inter-American Juridical Committee recommended the extension of the PCIJ's jurisdiction. Early in 1943, the British Government took the initiative of inviting a number of experts to London to constitute an informal Inter-Allied Committee to examine the matter. This Committee, under the chairmanship of Sir William Malkin (United Kingdom), held 19 meetings, which were attended by jurists from 11 countries. In its report, which was published on 10 February 1944, it recommended:

- that the Statute of any new international court created should be based on that of the PCIJ;
- that advisory jurisdiction should be retained in the case of the new Court;
- that acceptance of the jurisdiction of the new Court should not be compulsory;
- that the Court should have no jurisdiction to deal with essentially political matters.

Meanwhile, on 30 October 1943, following a conference between China, the USSR, the United Kingdom and the United States, a joint declaration was issued recognizing the necessity

> "of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security".

This declaration led to exchanges between the Four Powers at Dumbarton Oaks, resulting in the publication on 9 October 1944 of proposals for the establishment of a general international organization, to include an international court of justice. The next step was the convening of a meeting in Washington, in April 1945, of a committee of jurists representing 44 States. This Committee, under the chairmanship of G. H. Hackworth (United States), was entrusted with the preparation of a draft Statute for the future international court of justice, for submission to the San Francisco Conference, which during the months of April to June 1945 was to draw up the United Nations Charter. The draft Statute prepared by the Committee was based on the Statute of the PCIJ and was thus not a completely fresh text. The Committee nevertheless declined to take a position on a number of points, which it felt should be decided by the Conference: should a new court be created? In what form should the court's mission as the principal judicial organ of the United Nations be stated? Should the court's jurisdiction be compulsory and, if so, to what extent? How should the judges be elected? The final decisions on these points, and on the definitive form of the Statute, were taken at the San Francisco Conference, in which 50 States participated.

That Conference decided against compulsory jurisdiction and in favour of the creation of an entirely new court, which would be a principal organ of the United Nations, on the same footing as the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council and the Secretariat, and with its Statute annexed to and forming part of the Charter. The chief reasons that led the Conference to decide to create a new Court were the following:

— As the Court was to be the principal judicial organ of the United Nations, it was considered inappropriate for this role to be filled by the PCIJ, which was linked to the League of Nations, then on the verge of dissolution.

— The creation of a new Court was more logical in light of the fact that several States that were parties to the Statute of the PCIJ were not represented at the San Francisco Conference, and, conversely, several States represented at the Conference were not parties to the Statute.

— There was a feeling in some quarters that the PCIJ formed part of an older order, in which European States had dominated the political and legal affairs of the international community, and that the creation of a new Court would make judicial settlement more accessible to non-European States. This has in fact happened as the membership of the United Nations has grown from 51 States in 1945 to 193 in 2013.

Participants at the San Francisco Conference nevertheless emphasized that all continuity with the past should not be broken, particularly since the Statute of the PCIJ had itself been drawn up on the basis of past experience, and it was considered better not to change something that in general had worked well. The Charter therefore plainly stated that the Statute of the ICJ was based upon that of the PCIJ; moreover, provisions were included in it to ensure that the PCIJ's jurisdiction was transferred as far as possible to the ICJ. The PCIJ met for the last time in October 1945, when it was decided to take all appropriate measures to ensure the transfer of its archives and effects to the new ICJ, which, like its predecessor, was to have its seat at the Peace Palace. The judges of the PCIJ still formally in office all resigned on 31 January 1946, and the election of the first Members of the ICJ took place on 5 February 1946, at the First Session of the United Nations General Assembly and Security Council. In April 1946, the PCIJ was formally dissolved, and the ICJ, meeting for the first time, elected as its President Judge Guerrero, the last President of the PCIJ, and appointed the members of its Registry (largely from among former officials of the PCIJ). On 18 April 1946, the new Court held its inaugural public sitting.

The Statute and the Rules of Court

The Statute of the ICJ elaborates certain general principles laid down in Chapter XIV of the Charter. Whilst it forms an integral part of the Charter, it is not incorporated into it, but is simply annexed. This has avoided unbalancing the 111 articles of the Charter by the addition of the 70 articles of the Statute, and has facilitated access to the Court for States that are not members of the United Nations (see below p. 33). The articles of the Statute are divided into five chapters: "Organization of the Court" (Arts. 2-33), "Competence of the Court" (Arts. 34-38), "Procedure" (Arts. 39-64), "Advisory Opinions" (Arts. 65-68) and "Amendment" (Arts. 69-70). The procedure for amending the Statute is the same as that for amending the Charter, i.e., by a two-thirds majority vote in the General Assembly and ratification by two-thirds of the States, including the permanent members of the Security Council — the only difference being that States parties to the Statute without being members of the United Nations are allowed to participate in the vote in the General Assembly. Should the ICJ consider it desirable for its Statute to be amended, it must submit a proposal to this effect to the General Assembly by means of a written communication addressed to the Secretary-General. However, there has hitherto been no amendment of the Statute of the ICJ.

In pursuance of powers conferred upon it by the Statute, the ICJ has drawn up its own Rules of Court. These Rules are intended to supplement the general rules set forth in the Statute and to make detailed provision for the steps to be taken to comply with them; however, the Rules may not contain any provisions that are repugnant to the Statute or which confer upon the Court powers that go beyond those conferred by the Statute.

The Rules of Court refer to the provisions of the Statute concerning the Court's procedure and the working of the Court and of the Registry, so that on many points it is necessary to consult both documents. The ICJ is competent to amend its Rules of Court, and can thus incorporate into them provisions embodying its practice as this has developed. On 5 May 1946, it adopted Rules largely based on the latest version of the Rules of Court of the PCIJ, which dated from 1936. In 1967, in the light of the experience it had acquired and of the need to adapt the

Rules to changes that had taken place in the world and in the pace of international events, it embarked upon a thorough revision of its Rules and set up a standing committee for the purpose. On 10 May 1972, it adopted certain amendments which came into force on 1 September that year. On 14 April 1978, the Court adopted a thoroughly revised set of Rules which came into force on 1 July 1978. The object of the changes made — at a time when the Court's activity had undeniably fallen off — was to increase the flexibility of proceedings, making them as simple and rapid as possible, and to help reduce the costs to the parties, in so far as these matters depended upon the Court. On 5 December 2000, the Court amended two articles of the 1978 Rules: Article 79 on preliminary objections and Article 80 concerning counter-claims. The purpose of the new amendments was to shorten the duration of these incidental proceedings and to clarify the rules in force so as to reflect more faithfully the Court's practice. The amended versions of Articles 79 and 80 entered into force on 1 February 2001, with the previous versions continuing to govern all phases of cases submitted to the Court before that date. Amended and slightly simplified versions of the Preamble and of Article 52 entered into force on 14 April 2005. On 29 September 2005, a new version of Article 43 came into force, setting out the circumstances in which the Court was required to notify a public international organization that is a party to a convention whose construction may be in question in a case brought before it.

Moreover, since October 2001 the Court has issued Practice Directions for the use of States appearing before it. These Directions involve no amendment of the Rules but are supplemental to them. They are the fruit of the Court's constant review of its working methods, responding to a need to adapt to the considerable growth in its activity over recent years. Reference will be made to certain of these directions later in this handbook.

As at 31 December 2013, 129 contentious cases had been brought before the Court (see below pp. 297-302), which had delivered 114 judgments (some cases having been withdrawn). It had also given 27 advisory opinions (see below pp. 303-304). The small number of cases initially submitted to the Court led to the adoption of a resolution by the General Assembly in 1947 emphasizing the need to make greater use of the Court. Shortly thereafter, the Court's work assumed a tempo comparable to that of the PCIJ. Then, starting in 1962, the States which had created the ICJ appeared to be more reluctant to submit their disputes to it. The number of cases submitted each year, which had averaged two or three during the fifties, fell to none or one in the sixties; from July 1962 to January 1967 no new case was brought, and the situation was the same from February 1967 until August 1971. In the summer of 1970, at a time when the level of the Court's activity was in marked decline, 12 United Nations Member States suggested "that a study should be undertaken . . . of the obstacles to the satisfactory functioning of the International Court of Justice, and ways and means of removing them", including "additional possibilities for use of the Court that have not yet been adequately explored". The General Assembly placed on its agenda an examination of the Court's role and, after several rounds of discussion and written observations, on 12 November 1974 adopted a fresh resolution concerning the ICJ, which called upon States "to keep under review the possibility of identifying cases in which use [could] be made of the International Court of Justice" (resolution 3232 (XXIX)). From 1972 the number of new cases brought to the Court accelerated. Between 1972 and 1989, new cases averaged from one to three each year. Between 1990 and 1999 — a period declared the "United Nations Decade of International Law" by the General Assembly in its resolution 44/23 of 17 November 1989 — the Court was asked to deal with 35 contentious cases and three requests for advisory opinions. In his final report on the United Nations Decade of International Law (A/54/362), the Secretary-General pointed out that the "promotion of means and methods for the peaceful settlement of disputes between States, including resort to, and full respect for, the International Court of Justice" had achieved notable success over the period; this was welcomed by all the States which spoke at the Decade's closing session (General Assembly Plenary Session of 17 November 1999 (A/54/PV.55)). The Court's level of judicial activity has remained very high to date. Since 2000, it has rendered 41 judgments and given three advisory opinions. In 2012, the General Assembly recognized "the positive contribution of the International Court of Justice, the principal judicial organ of the United Nations, including in adjudicating disputes among States, and the value of its work for the promotion of the rule of law" (declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, A/RES/67/1).

For the texts of the two resolutions adopted by the General Assembly concerning the use of the ICJ and the resolution relating to the United Nations Decade of International Law, see below, Annexes, pp. 278-283; the text of the resolution adopted by the Assembly on 4 December 2006, on the commemoration of the sixtieth anniversary of the International Court of Justice, is also included as an Annex (pp. 284-285). The Charter of the United Nations and the Statute and Rules of Court are published, together with a number of other basic documents concerning the Court, in the *I.C.J. Acts and Documents* series; they are also available on the Court's website (www.icj-cij.org).

2. The Judges and the Registry

The Court is a body composed of elected independent judges

The Members of the Court are elected by the Member States of the United Nations (193 in total) and other States that are parties to the Statute of the ICJ on an *ad hoc* basis (as in the case of Switzerland, for example, prior to its accession to the United Nations in 2002, see below p. 34). For obvious practical reasons, the number of judges cannot be equal to that of those States. It was fixed at 15 when the revised version of the Statute of the PCIJ that came into force in 1936 was drafted, and has since remained unchanged, despite occasional suggestions that the number be increased. The term of office of the judges is nine years. In order to ensure a certain measure of institutional continuity, one-third of the Court, i.e., five judges, is elected every three years. Judges are eligible for re-election. Should a judge die or resign during his or her term of office, a special election is held as soon as possible to choose a judge to fill the remainder of the term.

The ICJ being the principal judicial organ of the United Nations, it is by that Organization that the elections are conducted. Voting takes place both in the General Assembly and in the Security Council. Representatives of States parties to the Statute without being members of the United Nations are admitted to the Assembly for the occasion, whilst in the Security Council, for the purpose of these elections, no right of veto applies and the required majority is eight. The two bodies concerned vote simultaneously but separately. In order to be elected, a candidate must receive an absolute majority of the votes in both the General Assembly and the Security Council. This often requires multiple rounds of voting. There is a conciliation procedure to cover cases where one or more vacancies remain after three meetings have been held, and a further last-resort option in which the final decision is taken by those judges who have already been elected. Neither of these two possibilities has ever been used in respect of the ICJ; on the other hand, the conciliation procedure was used during the first elections to the PCIJ, having already been provided for in its Statute. The elections are generally held in New York on the occasion of the annual autumn session of the General Assembly. The judges elected at each triennial election (e.g., 2005, 2008, 2011, 2014, etc.) begin their term of office on 6 February of the following year, after which the Court proceeds to elect by secret ballot a President and Vice-President to hold office for three years. As is the case for all other elections by the Court, an absolute majority is necessary and there are no conditions with regard to nationality. After the President and the Vice-President, the order of seniority of Members of the Court is determined by the date on which their term of office began, and, in the case of judges taking office on the same day, by their age.

The provisions of the Statute concerning the composition of the ICJ, with a view to gaining for the Court the confidence of the greatest possible number of States, are careful to ensure that no State or group of States enjoys or appears to enjoy any advantage over the others.

- All States parties to the Statute have the right to propose candidates. Proposals are made not by the government of the State concerned, but by a group consisting of the members of the Permanent Court of Arbitration (PCA) designated by that State, i.e., by the four jurists who can be called upon to serve as members of an arbitral tribunal under the Hague Conventions of 1899 and 1907 (see above pp. 10-11). In the case of countries not represented on the PCA, nominations are made by a group constituted in the same way. Each group can propose up to four candidates, not more than two of whom may hold its nationality, whilst the others may be from any country whatsoever, whether a party to the Statute or not and whether or not that country has declared that it accepts the compulsory jurisdiction of the ICJ. The names of candidates must be communicated to the Secretary-General of the United Nations within a time-limit laid down by him.
- The Court may not include more than one national of the same State. Should two candidates having the same nationality be elected at the same time, only the elder is considered to have been validly elected. It is possible, however, for a State party to a case before the Court to choose a judge *ad hoc* with the same nationality as an elected judge (see below p. 25). There is nothing to prevent such a choice. Thus, in the case concerning the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*, both Cambodia and Thailand chose a judge *ad hoc* of French nationality. Since the Court already included on its Bench an elected judge of French nationality, there were three French judges sitting in that case.
- At every election of Members of the Court, the General Assembly and the Security Council are required to bear in mind "that in the body as a whole representation of the main forms of civilization and of the principal legal systems of the world should be assured". In practice this principle has found expression in the distribution of membership of the ICJ among the principal regions of the globe. Today this distribution is as follows: Africa 3, Latin America and the Caribbean 2, Asia 3, Western Europe and other States 5, Eastern Europe 2. This corresponds to the distribution of membership within the Security Council. Although there is no entitlement to membership on the part of any country, the ICJ has generally always included judges of the nationality of the perma-

nent members of the Security Council, with the sole exception of China. There was, in fact, no Chinese Member of the Court from 1967 to 1984.

It should be stressed that, once elected, a Member of the Court is a delegate neither of the government of his or her own country nor of that of any other State. Unlike most other organs of international organizations, the Court is not composed of representatives of governments. Members of the Court are independent judges whose first task, before taking up their duties, is to make a solemn declaration in open court that they will exercise their powers impartially and conscientiously. The Court has itself emphasized that it

> "acts only on the basis of the law, independently of all outside influence or interventions whatsoever, in the exercise of the judicial function entrusted to it alone by the Charter and its Statute".

In order to guarantee his or her independence, no Member of the Court can be dismissed unless, in the unanimous opinion of the other Members, he or she no longer fulfils the required conditions. This has never in fact happened.

The Statute stipulates that Members of the Court are to be elected

> "from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law".

How has this worked out in practice? Of the 103 Members of the Court elected between February 1946 and December 2013, 31 had held judicial office, eight of them having served as chief justice of the supreme court of their respective countries; 41 had been barristers and 75 professors of law; 69 had occupied senior administrative positions, such as legal adviser to the ministry of foreign affairs or ambassador; and 25 had held cabinet rank, two even having been Head of State. Almost all had played a relevant international role, having been, for instance, members of the PCA (42) or of the United Nations International Law Commission (38), participants in major international conferences as plenipotentiaries, etc. Some of those elected had previously played a part in cases before the PCIJ or the ICJ (39), in the role of agent, counsel or judge *ad hoc*. The average length of time that judges have served on the Court is 10 years and 1 month, the longest period being that of Judge Oda, at 27 years, and the shortest that of Judge Golunsky, at 17 months.

The Court is a permanent international institution

Article 22, paragraph 1, of the Statute states that "the seat of the Court shall be established at The Hague", a city which is also the seat of the Government of the Netherlands. The Court may, if it considers it desirable, hold sittings elsewhere, but this has never occurred. The Court occupies premises in the Peace Palace, which are placed at its disposal by the Carnegie Foundation of the Netherlands in return for a financial contribution by the United Nations, which in 2012 amounted to €1,264,152. It is assisted by its Registry (see below pp. 29-32) and enjoys the facilities of the Peace Palace Library; the Court has as its neighbours the PCA, which was founded in 1899, and the Hague Academy of International Law, founded in 1923.

Although the ICJ is deemed to be permanently in session, only its President is obliged to reside at The Hague. However, the other Members of the Court are required to be permanently at its disposal except during judicial vacations or leaves of absence, or when they are prevented from attending by illness or other serious reason. In practice, the majority of Court Members reside at The Hague and all will normally spend the greater part of the year there.

No Member of the Court may engage in any other occupation. He or she is not allowed to exercise any political or administrative function, nor to act as agent, counsel or advocate in any case. Any doubts with regard to this question are settled by decision of the Court. The most it will permit — provided that the exigencies of his or her Court duties so allow — is that a judge may investigate, conciliate or arbitrate in certain cases not liable to be submitted to the ICJ, may be a member of learned bodies, and may give lectures or attend meetings of a purely academic nature. Members of the Court are thus subject to particularly strict rules with regard to questions of incompatibility of functions.

The Members of the Court, when engaged on the business of the Court, enjoy privileges and immunities comparable with those of the head of a diplomatic mission. At The Hague, the President takes precedence over the doyen of the diplomatic corps, after which there is an alternation of precedence as between judges and ambassadors. The annual salary of Members of the Court, as well as the annual pension they receive on leaving the Court, are determined by the General Assembly as a special section in the United Nations budget, adopted on the proposal of the Court (the Court's total budget represented less than 2 per cent of the regular budget of the United Nations in 1946, and now accounts for less than 1 per cent of it).

The work of the ICJ is directed and its administration supervised by its President. The Court has set up the following bodies to assist him in his or her tasks: a Budgetary and Administrative Committee, a Rules Committee and a Library Committee, all of them composed of Members of the Court. In addition, other *ad hoc* committees have been formed to deal with issues such as information technology. The Vice-President takes the place of the President if the latter is unable to fulfil his or her duties or if the office of President becomes vacant, for which he receives a special daily allowance. In the absence of the Vice-President, this role falls to the senior judge.

The composition of the Court may vary from one case to another

When a case is submitted to the ICJ, various problems may arise with regard to the Court's composition (see also below pp. 64-65, 70-74 and 89-90). To begin with, no judge may participate in the decision of any case in which he has previously taken part in any capacity. Similarly, if a Member of the Court considers that for any special reason he ought not to participate in a case, that judge must so inform the President. It thus occasionally happens that one or more judges abstain from sitting in a given case. Since there are no deputy judges in the ICJ, no one else is substituted for them. The President may also take the initiative in indicating to a Member of the Court that in his or her opinion that judge should not sit in a particular case. Any doubt or disagreement on this point is settled by decision of the Court. Since 1978, the Rules have provided in Article 34 that parties may inform the President confidentially in writing of facts which they consider to be of possible relevance to the application of the provisions of the Statute in this regard.

A judge who, without having taken part in a case or having a special reason for refraining from sitting, simply happens to be a national of one of the parties, retains his or her right to sit, though should that judge be the President, his/her functions in the case will be exercised by the Vice-President.

Judges *ad hoc*

Under Article 31, paragraphs 2 and 3, of the Statute, a party not having a judge of its nationality on the Bench may choose a person to sit as judge *ad hoc* in that specific case under the conditions laid down in Articles 35 to 37 of the Rules of Court. Before taking up his duties, a judge *ad hoc* is required to make the same solemn declaration as an elected Member of the Court and takes part in any decision concerning the case on terms of complete equality with his or her colleagues. A judge *ad hoc* receives compensation for every day spent discharging his or her duties, that is to say, every day that the judge *ad hoc* spends in The Hague in order to take part in the Court's work, plus each day devoted to consideration of the case outside The Hague. A party must announce as soon as possible its intention of choosing a judge *ad hoc*. In cases which occur from time to time, where there are more than two parties to the dispute, it is laid down that parties which are in fact acting in the same interest are restricted to a single judge *ad hoc* between them — or, if one of them already has a judge of its nationality on the Bench, they are not entitled to choose a judge *ad hoc* at all. There are accordingly various possibilities, the following of which have actually occurred in practice: two regular judges having the nationality of the parties; two judges *ad hoc*; a regular judge of the nationality of one of the parties and a judge *ad hoc*; neither a regular judge having the nationality of one of the parties nor a judge *ad hoc*. Since 1946, 104 individuals have sat as judges *ad hoc*[*], 17 of whom have been elected Members of the Court at another time, 15 others having been proposed as candidates for election to the Court. Since there is no requirement laid down concerning the nationality of a judge *ad hoc* (unlike the situation that obtained prior to 1936), he or she may have the nationality of a country other than the one which chooses him/her (which has been the case in approximately half of all nominations) and even have the same nationality as an elected Member of the Court (which happened twice at the PCIJ and has occurred 21 times at the ICJ).

Commentators tend to be sparing in their criticism of the right of elected judges having the nationality of one of the parties to sit, since purely on the basis of the publicly announced results of the Court's voting and the published texts of separate or dissenting opinions, it is evident that they have often voted against the submissions of their country of origin (e.g., Judge Anzilotti, Judge Basdevant, Lord Finlay, Sir Arnold McNair and Judges Schwebel and Buergenthal). The institution of the judge *ad hoc*, on the other hand, has not received unanimous support. Whilst the Inter-Allied Committee of 1943-1944 (see above p. 15) argued that

> "countries will not in fact feel full confidence in the decision of the Court in a case in which they are concerned if the Court includes no judge of their own nationality, particularly if it includes a judge of the nationality of the other party",

certain members of the Sixth Committee of the General Assembly of the United Nations expressed the view, during the discussions between 1970 and 1974 on the role of the Court,

> "that the institution, which was a survival of the old arbitral procedures, was justified only by the novel character of the international judicial jurisdiction and would no doubt disappear as such jurisdiction became more firmly established".

Nevertheless, numerous writers take the view that it is useful for the Court to have participating in its deliberations a person more familiar with the views of one of the parties than the elected judges may sometimes be. It is furthermore worth pointing out that if the PCIJ and the ICJ had never had judges *ad hoc* and had always excluded Members of the Court having the nationality of one of the parties from sitting, their decisions — having regard to the voting alone — would have been much the same.

It follows from the foregoing that the composition and presidency of the ICJ will vary from one case to another and that the number of judges sitting in a given case will not necessarily be 15. There may be fewer, where one or more elected judges do not sit, or as many as 16 or 17 where there are judges *ad hoc*; in theory there may even be more than 17 judges on the Bench if there are several parties to a case who are not in the same interest. The composition of the Court and who presides over it also sometimes vary from one phase of a case to another: in other words, the composition and the President of the Court need not necessarily be the same with respect to interim measures of protection, preliminary objections and the merits.

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[*] This figure takes account of the fact that a number of judges *ad hoc* have been appointed at different times by different parties (for example, Judges Guillaume and Torres Bernárdez have each served as judge *ad hoc* on six occasions).

Nevertheless, once the Court has been finally constituted for a given phase of a case, i.e., from the opening of the oral proceedings on that phase until the delivery of judgment with respect thereto, its composition will no longer change. If during this time there is a renewal of the Court, those Members whose terms of office have ended continue to sit in the case and the retiring President continues to preside in respect of that phase of the case until the delivery of the decision bringing that phase to a close. This has occurred so far, in the time of the PCIJ, only in the *_Free Zones of Upper Savoy and the District of Gex_ case, but in the ICJ on two occasions, in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* and in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*. A permanent judge who resigns or dies after the opening of oral proceedings in a phase of a case is not replaced in respect of that phase. A judge who falls ill during proceedings in principle only resumes his or her participation if he or she has not missed any vital aspect of those proceedings. The quorum required for the Court to be validly constituted is nine judges, excluding judges *ad hoc*.

Assessors

The Statute and the Rules provide for still other possibilities with regard to the composition and organization of the Court. Some of these seemed to have fallen into oblivion, and interest has been expressed in reviving them in the Rules of Court (see above pp. 17-19), thus making use of the freedom of action which the Court's founders conferred upon it. It should be noted that Articles 26 and 27 of the PCIJ's Statute laid down the conditions in which it could hear certain cases relating to labour, transit and communications; the use of assessors by the Permanent Court or by the special chamber in question was mandatory for labour cases but optional for those concerning transit and communications. Neither Article 26 nor Article 27 was applied in practice.

As for the ICJ, Article 30, paragraph 2, of its Statute provides more broadly for assessors to be allowed to sit with the Court or its chambers, whatever the subject-area being dealt with. Thus the Court can, in a given case, sit with assessors, whom it elects by secret ballot, and who participate in its deliberations without, however, having the right to vote. At the present time, when disputes of a highly technical nature may be submitted to the Court, the use of assessors would make it possible for the Court to benefit from the views of proven experts. Although both a party and the Court itself can take the initiative in this respect, no use has ever been made of this possibility.

Chambers

Another possibility open to the parties is to ask that a dispute be decided not by the full Court but by a chamber composed of certain judges elected by the Court by secret ballot, whose decisions are regarded as emanating from the Court itself. The Court has three types of chambers:

— the Chamber of Summary Procedure, comprising five judges, including the President and Vice-President, and two substitutes, which the Court is required by Article 29 of the Statute to form annually with a view to the speedy despatch of business;

— any chamber, comprising at least three judges, that the Court may form pursuant to Article 26, paragraph 1, of the Statute to deal with certain categories of cases, such as labour or communications (echoes of the 1919 peace treaties);

— any chamber that the Court may form pursuant to Article 26, paragraph 2, of the Statute to deal with a particular case, after formally consulting the parties regarding the number of its members — and informally regarding their names — who will then sit in all phases of the case until its final conclusion, even if in the meantime they cease to be Members of the Court.

The provisions of the Rules concerning chambers of the Court are likely to be of interest to States that are required to submit a dispute to the ICJ or have special reasons for doing so but prefer, for reasons of urgency or other reasons, to deal with a smaller body than the full Court. The proceedings before chambers may be simplified (submission of a single written pleading by each party, shortened oral proceedings, etc.). The use of chambers may accordingly prove particularly useful for settling certain disputes pertaining to contemporary problems, such as, to give but one example, questions relating to the environment, which seem to be becoming increasingly critical, giving rise to international disputes of growing frequency and intensity. In this respect, in view of recent developments in the field of environmental law and protection, the Court, in July 1993, decided to establish a Chamber for Environmental Matters, which has been reconstituted periodically. However, no State has ever asked for a case to be heard by the Chamber: thus the case concerning the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, which raised environmental questions, was submitted to the full Court. Accordingly, in 2006, the Court decided not to hold elections for the reconstitution of the Chamber for Environmental Matters, it being understood that should parties in the future request the formation of such a chamber to rule on a dispute involving environmental law, that chamber would be constituted under Article 26, paragraph 2, of the Statute of the Court.

Despite the advantages that chambers can offer in certain cases, under the terms of the Statute their use remains exceptional (see Article 25, paragraph 1). Their formation requires the consent of the parties. Since chambers make it harder to implement the fundamental principle of equality between the world's "principal legal systems" and "main forms of civilization" (Article 9 of the Statute) when it comes to framing a judgment, cases cannot be divided among chambers at the Court's initiative in order for them to be dealt with more quickly, as is common practice at other courts. While, to date, no case has been heard by either of the first two types of chambers, by contrast there have been six cases dealt with by *ad hoc* chambers. The first of these was formed in 1982 in the case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine Area* between Canada and the United States, and the second was formed in 1985 in the case concerning the *Frontier Dispute* between Burkina Faso and the Republic of Mali. The third was set up in 1987 in the case concerning *Elettronica Sicula S.p.A. (ELSI)* between the United States of America and Italy, and the fourth was formed in the same year in the case concerning the *Land, Island and Maritime Frontier Dispute* between El Salvador and Honduras. The year 2002 saw the formation of a fifth chamber to deal with the *Frontier Dispute (Benin/Niger)* case and a sixth to hear the *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the* Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) *(El Salvador v. Honduras)*. On every occasion, the Chamber has comprised five members. The Chamber which sat in the *Gulf of Maine* case comprised four Members of the Court (one of them possessing the nationality of one of the parties) and one judge *ad hoc* chosen by the other party. The Chamber formed in the *Frontier Dispute (Burkina Faso/Republic of Mali)* case comprised three Members of the Court and two judges *ad hoc* chosen by the parties. The Chamber formed in the *Elettronica Sicula S.p.A. (ELSI)* case comprised five Members of the Court (two of them each possessing the nationality of one of the parties). The Chamber which sat in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* comprised three Members of the Court and two judges *ad hoc* chosen by the parties, and the two Chambers formed in 2002 were similarly composed.

The Registry is the permanent administrative organ of the Court

The ICJ is the only principal organ of the United Nations not to be assisted by the Secretary-General, who has no authority over the Court. The Registry is the permanent administrative organ of the ICJ. It is responsible to the Court alone. Since the ICJ is both a court of justice and an international organ, the Registry's tasks include both helping in the administration of justice — with sovereign States as litigants — and acting as an international secretariat. Its activities are thus on the one hand of a judicial and diplomatic nature, whilst on the other they correspond to those of the legal, administrative and financial departments and of the conference and information services of an international organization. Its officials take an oath of loyalty and discretion on entering upon their duties. In general they enjoy the same privileges and immunities as members of diplomatic missions at The Hague of comparable rank. Their conditions of employment, their emoluments and their pension rights correspond to those of United Nations officials of equivalent category and grade; the costs of the Court's Registry are borne by the United Nations. In recent years Registry staff numbers have been substantially increased, in order to deal with the unprecedented growth in the Court's work. The Registry consists of:

— a Registrar, who has the same rank as an Assistant Secretary-General of the United Nations and enjoys privileges and immunities comparable to those of the head of a diplomatic mission, elected by the Court by secret ballot for a term of seven years. The Registrar, who is required to reside at The Hague, directs the work of the Registry and is responsible for all its departments. He serves as the channel for communication between the ICJ and States or organizations, keeps the General List up to date, attends meetings of the Court, ensures that minutes are drawn up, countersigns the Court's decisions and has custody of its seal;

— a Deputy-Registrar, elected in the same way as the Registrar, who assists the Registrar and acts as Registrar in the latter's absence;

— over 100 officials (either permanent or holding fixed-term contracts) appointed by the Court or the Registrar, consisting of first secretaries, secretaries and staff from the following departments and divisions: Department of Legal Matters, Department of Linguistic Matters, Information Department, Administrative and Personnel Division, Finance Division, Publications Division, Library of the Court, Archives, Indexing and Distribution Division, Text Processing and Reproduction Division, IT Division and General Assistance Division (comprising telephonists receptionists, messengers and administrative assistants). In addition, there is a Medical Unit and a Security Division;

— additional temporary staff engaged by the Registrar as and when the Court's work may so require: including interpreters, translators, typists, etc.

Over and above the Registry's legal work, a substantial amount of its activity is linguistic. On the grounds that "[t]he permanence of the language must be an outward sign of the permanence of the Court", the 1920 Advisory Committee of Jurists (see above p. 12) had pronounced itself in favour of the Court's employing French alone, but the Council and Assembly of the League of Nations decided that the PCIJ, like the League itself, should have two official languages: French and English. This principle was maintained for the ICJ in 1945, despite the fact that the United Nations itself adopted five official languages (six from 1973). Members of the Court accordingly express themselves in French or English and it is in those languages that parties file their pleadings with the Court or deliver oral arguments before it, the Registry providing sworn interpreters and translators to put the spoken or written word into the Court's other official language (see below pp. 49-55, 70-76 and 84-86). The parties to a case may agree between themselves to use a single language (as in *_"Lotus"_, *_Brazilian Loans_, *_Lighthouses case between France and Greece_, *_Electricity Company of Sofia and Bulgaria_, _Asylum_, _Frontier Dispute (Burkina Faso/Republic of Mali)_, _Kasikili/Sedudu Island_, _Frontier Dispute (Benin/Niger)_ and _Frontier Dispute (Burkina Faso/Niger)_). Parties have the right to employ a language other than French or English, provided they themselves furnish a translation or interpretation into one of the Court's official languages. Registry documents are bilingual and the Registry conducts correspondence in French and/or English. All Registry officials are required to be highly proficient in one of the two languages and to have a very good knowledge of the other.

Among the Registry's duties is that of making the outside world aware of the Court's work. Accordingly it maintains relations with international organizations that deal with legal questions, universities, the press and the general public. It discharges this duty in close collaboration with the United Nations Department of Public Information, whose task it is to provide information concerning the activities of organs of the United Nations. The Registry is also responsible for the Court's publications[1], which carry on under different names from the old PCIJ series. These publications comprise:

— documents emanating from the Court or the parties (see below pp. 49-50, 72-74 and 89): *Reports of Judgments, Advisory Opinions and Orders* (cited as *I.C.J. Reports*); *Pleadings, Oral Arguments, Documents* (cited as *I.C.J. Pleadings*), and *Acts and Documents concerning the Organization of the Court* (cited as *I.C.J. Acts and Documents*);

— documents prepared under the responsibility of the Registrar: *Yearbooks* and the *Bibliography of the International Court of Justice* (cited as *I.C.J. Yearbook* and *I.C.J. Bibliography*).

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It has been seen that the Court is clearly distinct from arbitral tribunals, which by nature are not permanent: not only is it constituted in advance, having its own procedural rules and established case law, it is also a permanent institution with its own premises. Because they contribute to the Organization's regular budget, United Nations Member States which are parties to proceedings before the Court do not have to meet expenses relating to the activities of the judges (emoluments) or to the conduct of the proceedings (administrative and linguistic costs, etc.).

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[1] ICJ publications are sold by the Sales Section of the United Nations Secretariat in New York. They may be consulted in main libraries with a substantial legal section, and may be purchased from specialized bookshops selling United Nations publications. A *Catalogue* of all publications is issued and regularly updated.

They are only required to bear the cost of presenting their arguments (advocates' fees, production of their written pleadings, etc.). Since 1989, there has been a special fund, set up by the Secretary-General of the United Nations, to provide States with financial assistance in this regard (see below p. 45). Given the range of possibilities described above — judgment *ex aequo et bono*, sittings held away from The Hague, use of a non-official language, the appointment of judges *ad hoc* and assessors and the formation of chambers — parties are able to benefit from all the flexibility which is normally associated with arbitration, but without losing the many advantages inherent in recourse to an institution offering them all the necessary legal security, as is the case with the ICJ.

For a list of present and former Members of the ICJ and judges *ad hoc*, see below, Annexes, pp. 286-288 and 289-296. A list of present Members of the Court and their biographies, the organizational structure of the Registry and the budget of the Court are published each year in the *I.C.J. Yearbook*. Judges' biographies are published in the *I.C.J. Yearbook* corres-ponding to the year of their election. They are also available on the Court's website (www.icj-cij.org).

3. The Parties

Only States may be parties to cases before the Court

It is the function of the ICJ to decide in accordance with international law disputes of a legal nature that are submitted to it by States. In doing so it is helping to achieve one of the primary aims of the United Nations, which, according to the opening paragraph of Article 1 of the Charter, is to bring about the settlement of disputes by peaceful means and in conformity with the principles of justice and international law.

An international legal dispute is, as the PCIJ put it, "a disagreement on a question of law or fact, a conflict, a clash of legal views or of interests". Any resultant adversarial proceedings before an international tribunal are known as "contentious" proceedings. It is conceivable that such proceedings could be between a State on the one hand and a corporate body or an individual on the other. Within their respective fields of jurisdiction, institutions such as the Court of Justice of the European Union in Luxembourg, the European Court of Human Rights in Strasbourg, the Inter-American Court of Human Rights in San José, Costa Rica, or the newly-created African Court on Human and Peoples' Rights in Arusha, Tanzania, would be entitled to hear such disputes. This is not the case, however, with the ICJ, to which no contentious case can be submitted unless both applicant and respondent are States. Private interests can only form the subject of proceedings before the Court if a State, exercising its right of diplomatic protection, takes up the case of one of its nationals and invokes against another State the wrongs which its national claims to have suffered at the latter's hands; the dispute thus then becomes one between States (see, for example: *Ambatielos*; *Anglo-Iranian Oil Co.*; *Nottebohm*; *Interhandel*; *Barcelona Traction*; *Elettronica Sicula S.p.A. (ELSI)*; *Vienna Convention on Consular Relations (Paraguay v. United States of America)*; *LaGrand (Germany v. United States of America)*; *Avena and Other Mexican Nationals (Mexico v. United States of America)*; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*). Like any other court, the ICJ can only operate within the constitutional limits that have been laid down for it. Hardly a day passes without the Registry receiving applications from private individuals. However distressing the facts in such applications may be, the ICJ is unable to entertain them, and a standard reply is always sent: "Under Article 34 of the Statute, only States may be parties in cases before the Court."

The Court is open to:

- Member States of the United Nations, which, by signing the Charter, accepted its obligations and thus at the same time became parties to the Statute of the ICJ, which forms an integral part of the Charter;
- those States which have become parties to the Statute of the ICJ without signing the Charter or becoming members of the United Nations (as in the case of Nauru and Switzerland, for example, before they became UN members); these States must satisfy certain conditions laid down by the General Assembly on the recommendation of the Security Council: acceptance of the provisions of the Statute, an undertaking to comply with the decisions of the ICJ and a regular contribution to the expenses of the Court;
- any other State which, whilst neither a member of the United Nations nor a party to the Statute of the ICJ, has deposited with the Registry of the ICJ a declaration that meets the requirements laid down by the Security Council, whereby it accepts the jurisdiction of the Court and undertakes to comply in good faith with the Court's decisions. Many States have found themselves in this situation before becoming members of the United Nations, having concluded treaties providing for the jurisdiction of the Court, they deposited with the Registry the necessary declaration. When they have been parties to a case, they have been required to contribute to the costs thereof (e.g., the Federal Republic of Germany).

The jurisdiction of the Court so far as concerns the parties entitled to appear before it — jurisdiction *ratione personae* — covers States of the kind described above. In other words, in order for a dispute to be validly submitted to the Court it is necessary that it be between two or more such States (e.g., the cases concerning *Legality of the Use of Force*, brought by Yugoslavia against ten member States of NATO in 1999).

A case can only be submitted to the Court with the consent of the States concerned

While jurisdiction *ratione personae* is a requirement in every case before the Court, it is not in itself enough. A fundamental principle governing the settlement of international disputes is that the jurisdiction of an international tribunal depends in the last resort on the consent of the States concerned to accept that jurisdiction. Accordingly, no sovereign State can be made a party to proceedings before the Court unless it has in some manner or other consented thereto. It must have agreed that the dispute or the class of disputes in question should be dealt with by the Court. It is this agreement that determines the jurisdiction of the Court in respect of that particular dispute — the Court's jurisdiction *ratione materiae*. It is true that Article 36 of the Charter provides that the Security Council, which may at any stage of a dispute recommend appropriate procedures or methods of adjustment, is to "take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice". In the *Corfu Channel* case, however, the ICJ did not consider a recommendation by the Security Council to this effect sufficient to confer jurisdiction on the Court independently of the wishes of the parties to the dispute.

Special agreements

The various ways by which States may consent to have their disputes of a legal nature decided by the ICJ are indicated in Article 36 of the Statute. Paragraph 1 thereof provides:

> "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force."

The first possibility envisaged here is where the parties bilaterally agree to submit an already existing dispute to the ICJ and thus to recognize its jurisdiction for purposes of that particular case. Such an agreement conferring jurisdiction on the Court is known as a "special agreement" or "compromis". Once such a special agreement has been lodged with the Court (whether by one party alone or jointly), the latter can entertain the case. Eleven disputes were referred to the PCIJ in this way, while the ICJ has received seventeen (*Asylum*, *Minquiers and Ecrehos*; *Sovereignty over Certain Frontier Land*; *North Sea Continental Shelf* (two cases); *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*; *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (heard by a Chamber); *Continental Shelf (Libyan Arab Jamahiriya/Malta)*; *Frontier Dispute (Burkina Faso/Republic of Mali)* (heard by a Chamber); *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)* (heard by a Chamber); *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*; *Kasikili/Sedudu Island (Botswana/Namibia)*; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*; *Frontier Dispute (Benin/Niger)* (heard by a Chamber); *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*; *Frontier Dispute (Burkina Faso/Niger)*) (see table on p. 36).

It can also happen that the consent of a respondent State may be deduced from its conduct in relation to the Court or in relation to the applicant; this is a fairly rare situation, known as *forum prorogatum* (e.g., **Mavrommatis Jerusalem Concessions*; **Rights of Minorities in Upper Silesia*; *Corfu Channel*). For the Court to exercise jurisdiction on the basis of *forum prorogatum*, the element of consent must be either explicit or clearly to be deduced from the relevant conduct of a State (*Anglo-Iranian Oil Co.*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*). On occasion, a State has tried to bring a case before the ICJ whilst recognizing that the opposing party has not consented to the Court's jurisdiction and inviting it to do so; to date, there have been only two instances where a State against which an application has been filed has accepted such an invitation: *Certain Criminal Proceedings in France (Republic of the Congo v. France)*; *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v.*

France). Such acceptance means that the case now exists; it is immediately entered on the Court's General List, and the procedure takes its normal course.

Cases instituted by Special Agreement

Case	Parties	Date of Special Agreement	Date of notification (filing in the Registry)
Asylum	Colombia/Peru	31 August 1949	15 October 1949
Minquiers and Ecrehos	France/ United Kingdom	29 December 1950	6 December 1951
Sovereignty over Certain Frontier Land	Belgium/ Netherlands	7 March 1957	27 November 1957
North Sea Continental Shelf	Federal Republic of Germany/Denmark	2 February 1967	20 February 1967
North Sea Continental Shelf	Federal Republic of Germany/ Netherlands	2 February 1967	20 February 1967
Continental Shelf (Tunisia/Libyan Arab Jamahiriya)	Tunisia/Libyan Arab Jamahiriya	10 June 1977	1 December 1978 and 19 February 1979[1]
Delimitation of the Maritime Boundary in the Gulf of Maine Area	Canada/United States of America	29 March 1979	25 November 1981
Continental Shelf (Libyan Arab Jamahiriya/Malta)	Libyan Arab Jamahiriya/Malta	23 May 1976	26 July 1982
Frontier Dispute	Burkina Faso/ Republic of Mali	16 September 1983	14 October 1983
Land, Island and Maritime Frontier Dispute	El Salvador/ Honduras	24 May 1986	11 December 1986
Territorial Dispute	Libyan Arab Jamahiriya/Chad	31 August 1989	31 August 1990 and 3 September 1990[2]
Gabčíkovo-Nagymaros Project	Hungary/Slovakia	7 April 1993	2 July 1993
Kasikili/Sedudu Island	Botswana/Namibia	15 February 1996	29 May 1996
Sovereignty over Pulau Ligitan and Pulau Sipadan	Indonesia/Malaysia	31 May 1997	2 November 1998
Frontier Dispute	Benin/Niger	15 June 2001	3 May 2002
Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge	Malaysia/ Singapore	6 February 2003	24 July 2003
Frontier Dispute	Burkina Faso/Niger	24 February 2009	20 July 2010

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[1] The first date relates to the notification by Tunisia and the second to the notification by the Libyan Arab Jamahiriya.

[2] The first date relates to the notification by the Libyan Arab Jamahiriya and the second to the filing by Chad of an Application instituting proceedings against the Libyan Arab Jamahiriya. The parties subsequently agreed that the proceedings in the case had in effect been instituted by two separate notifications of the same Special Agreement.

Treaties and conventions

The second possibility envisaged in Article 36, paragraph 1, of the Statute is where treaties or conventions in force confer jurisdiction on the Court. It has indeed become a general international practice to include in international agreements — both bilateral and multilateral — provisions, known as *compromissory clauses*, which stipulate that disputes of a given class shall or may be submitted to one or more methods for the pacific settlement of disputes. Numerous clauses of this kind provide for recourse to conciliation, mediation or arbitration; others provide for recourse to the Court, either immediately or after the failure of other means of pacific settlement. Accordingly, the States signatory to such agreements may, if a dispute of the kind envisaged in the compromissory clause arises between them, either bring the matter before the Court by filing a unilateral application, or conclude a special agreement to that end. In practice, the wording of such compromissory clauses varies from one treaty to another. Model clauses have been prepared by learned bodies, such as the Institute of International Law (1956), and by regional organizations (Recommendation CM/Rec(2008)8 of the Committee of Ministers to Member States on the Acceptance of the Jurisdiction of the International Court of Justice, Council of Europe, 2008). Compromissory clauses are to be found in treaties or conventions:

— having as their object the pacific settlement in general of disputes between two or more States and providing in particular for the submission to judicial decision of specified classes of conflicts between States, subject sometimes to certain exceptions (e.g., the 1957 European Convention for the Peaceful Settlement of Disputes);

— having some other specific object, in which case the clause will usually refer to disputes concerning the interpretation or application of the treaty or convention (e.g., the International Convention on the Elimination of All Forms of Racial Discrimination (1965); the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Punishments (1984), etc.), or to only some of its provisions (for example, in the 1969 Vienna Convention on the Law of Treaties, disputes relating to the application and interpretation of Article 64, which addresses the consequences of the emergence of a new peremptory norm of general international law (*jus cogens*)). Such clauses may be included in the body of the text or in a protocol annexed to the treaty (e.g., the Optional Protocols concerning the Compulsory Settlement of Disputes appended to the Vienna Convention on Diplomatic Relations (1961), or to the Vienna Convention on Consular Relations (1963)). They may be compulsory or optional and may or may not be open to reservations.

Logically, compromissory clauses included in treaties before the creation of the United Nations conferred jurisdiction on the PCIJ, whereas nowadays such clauses confer jurisdiction on the ICJ. In order to prevent those earlier clauses from becoming moot, the present Statute provides that they shall now be taken to confer jurisdiction on the ICJ. Provided that the agreement in which they are contained is still in force and that the States concerned are parties to the Statute of the ICJ, any dispute covered by such clauses can be submitted to the ICJ in the same way as it could have been to the PCIJ. Several hundred treaties or conventions that confer jurisdiction on the Court through a compromissory clause have been registered with the Secretariat of the League of Nations or the United Nations and appear in the collections of treaties published by those two organizations. In addition, the PCIJ and the ICJ have published lists of and extracts from such treaties and conventions.

Examples of treaties or conventions conferring jurisdiction on the ICJ

American Treaty on Pacific Settlement	Bogotá	30 April 1948
Convention on the Prevention and Punishment of the Crime of Genocide	Paris	9 December 1948
Revised Act for the Pacific Settlement of International Disputes	Lake Success	28 April 1949
Convention relating to the Status of Refugees	Geneva	28 July 1951
Treaty of Peace with Japan	San Francisco	8 September 1951
Treaty of Friendship (India/Philippines)	Manila	11 July 1952
Universal Copyright Convention	Geneva	6 September 1952
European Convention for the Peaceful Settlement of Disputes	Strasbourg	29 April 1957
Single Convention on Narcotic Drugs	New York	30 March 1961
Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes	Vienna	18 April 1961
International Convention on the Elimination of All Forms of Racial Discrimination	New York	7 March 1966
Convention on the Law of Treaties	Vienna	23 May 1969
Convention on the Suppression of the Unlawful Seizure of Aircraft	The Hague	16 December 1970
Treaty of Commerce (Benelux/USSR)	Brussels	14 July 1971
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	Montreal	23 September 1971
International Convention against the Taking of Hostages	New York	17 December 1979
General Peace Treaty (Honduras/El Salvador)	Lima	30 October 1980
Convention on Treaties Concluded between States and International Organizations or between International Organizations	Vienna	21 March 1986

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	Vienna	20 December 1988
United Nations Framework Convention on Climate Change	New York	9 May 1992
Convention on Biological Diversity	Rio de Janeiro	5 June 1992
Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions	Oslo	14 June 1994
International Convention for the Suppression of the Financing of Terrorism	New York	9 December 1999
United Nations Convention against Transnational Organized Crime	New York/Palermo	15 November 2000
Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime	New York	31 May 2001
Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters	Kiev	21 May 2003
United Nations Convention against Corruption	Merida	31 October 2003
International Convention for the Suppression of Acts of Nuclear Terrorism	New York	13 April 2005
Convention on Cluster Munitions	Dublin	30 May 2008

It is not always easy to determine which of those treaties are still in force. They probably number around 400, some being bilateral, involving about 60 States, and others multilateral, involving a greater number of States.

Declarations accepting the compulsory jurisdiction of the Court

A third means of consent to the Court's jurisdiction is set out in paragraphs 2 and 3 of Article 36 of the Statute:

> "2. The States parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: *(a)* the interpretation of a treaty; *(b)* any question of international law; *(c)* the existence of any fact

> which, if established, would constitute a breach of an international obligation; *(d)* the nature or extent of the reparation to be made for the breach of an international obligation.
>
> 3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time."

This system, based on what has been known since the days of the PCIJ as the "optional clause", has led to the creation of a group of States whose position in relation to the Court is comparable, in a sense, to that of the inhabitants of a country in relation to the courts of that country. Each State belonging to this group has in principle the right to bring any one or more other States of the group before the Court by filing an application with the latter, and, conversely, it has undertaken to appear before the Court should one or more such other States institute proceedings against it. This is why such declarations, to which reservations may be attached (see below pp. 41–44), are known as "declarations of acceptance of the compulsory jurisdiction of the Court".

These declarations, which take the form of a unilateral act of the State concerned, are deposited with the Secretary-General of the United Nations and are generally signed by that State's foreign minister, or by its representative to the United Nations. They are published in the United Nations Treaty Series and in the *I.C.J. Yearbook* for the year in which they were made, as well as on the Court's website (www.icj-cij.org). Despite solemn appeals by the UN General Assembly (see below pp. 278-281) and by the Secretary-General (see, for example, his reports from 2001, *Prevention of Armed Conflict*[4], and 2012, *Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels*[5]), as well as by learned bodies such as the Institute of International Law[6], they remain fewer in number than might have been hoped. As at December 2013 there were only 70, from the following regional groups: Africa 22; Latin America and the Caribbean 13; Asia 7; Europe and other States 28. It should be added that 15 other States that had at one time recognized the compulsory jurisdiction of the ICJ have withdrawn their declarations, nine of them after they had been made respondents in proceedings before the Court. As with treaties or conventions, the Statute provides that declarations that refer to the PCIJ shall be regarded as applying to the ICJ. Six of these were still in force in 2013, but ten countries which had at one time recognized the compulsory jurisdiction of the PCIJ have never done so in respect of the ICJ. The table below shows the relative increase and decrease in declarations over the years.

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[4] A/55/985-S/2001/574 and Corr. 1.

[5] A/66/749.

[6] Compulsory Jurisdiction of International Courts and Tribunals, resolution adopted by the Institute of International Law at its Neuchâtel session in 1959.

Historical growth of States accepting the Court's compulsory jurisdiction and States parties to the Statute of the Court

	States accepting compulsory jurisdiction	States parties to the Statute
1925 (PCIJ)	23	36
1930	29	42
1935	42	49
1940	32	50
1945 (ICJ)	23	51
1950	35	61
1955	32	64
1960	39	85
1965	40	118
1970	46	129
1975	45	147
1980	47	157
1985	46	162
1990	53	162
1995	59	187
2000	63	189
2005	65	191
2010	66	192
2013	70	193

Establishment of the Court's jurisdiction on this basis is often complicated by conditions attached to the acceptances of compulsory jurisdiction, which are intended to limit their scope. The majority of declarations (52 out of the 70 in force as at December 2013) contain such reservations, excluding the Court's jurisdiction in respect of various issues.

Firstly, 42 States have limited their optional clause declarations by stipulating that any other mechanisms of dispute settlement as agreed between the parties will prevail over the general jurisdiction of the Court.

Secondly, 33 States have limited their consent to the Court's jurisdiction *ratione temporis*, specifying that the declaration covers only disputes arising after the date that consent was given or concerning situations arising after that date.

Thirdly, 27 States have limited the scope of their optional clause declarations by excluding matters falling within their domestic jurisdiction. Under Article 2, paragraph 7, of the United Nations Charter, nothing contained in the Charter: "shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state".

With regard to this condition, it is indisputable that every sovereign State has, under international law, what is known as its reserved domain, and it would be inconceivable for the ICJ to decide issues relating thereto. Nevertheless, as the PCIJ made clear in one of its first decisions,

> "[t]he question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations".

This is no doubt one of the reasons why certain States have excluded from their recognition of the compulsory jurisdiction of the ICJ questions falling essentially within their field of domestic jurisdiction as "determined" by the State concerned, or which such State "considers" to fall essentially within its domestic jurisdiction.

States recognizing the compulsory jurisdiction of the Court (with or without special conditions)

December 2013

Australia
Austria
Barbados
Belgium
Botswana
Bulgaria
Cambodia
Cameroon
Canada
Costa Rica
Côte d'Ivoire
Cyprus
Democratic Republic of the Congo
Denmark
Djibouti
Dominica, Commonwealth of
Dominican Republic
Egypt
Estonia
Finland
Gambia
Georgia
Germany
Greece
Guinea, Republic of
Guinea-Bissau
Haiti
Honduras
Hungary
India

Ireland
Japan
Kenya
Lesotho
Liberia
Liechtenstein
Lithuania
Luxembourg
Madagascar
Malawi
Malta
Marshall Islands
Mauritius
Mexico
Netherlands
New Zealand
Nicaragua
Nigeria
Norway
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Senegal
Slovakia
Somalia
Spain

Sudan
Suriname
Swaziland
Sweden
Switzerland
Timor-Leste
Togo
Uganda
United Kingdom of Great Britain and Northern Ireland
Uruguay

Ten countries originally employed such reservations in their declarations accepting the compulsory jurisdiction of the Court, and these were invoked in the *Certain Norwegian Loans* and *Interhandel* cases (1957 and 1959). The ICJ upheld the objection based on the reservation in the former case and did not address it in the latter case, since it upheld an objection based on other grounds. In these cases, certain Members of the Court expressed the view that such reservations were contrary to the Statute: for some, the reservation as such was null and void, whereas for others the whole declaration of acceptance of compulsory jurisdiction was a nullity. There were many calls for those governments that had included such reservations in their declarations to withdraw them. Certain States did so. As at December 2013, five declarations included a clause of this kind (Liberia, Malawi, Mexico, Philippines and Sudan).

Fourthly, 18 States have included a condition in their declaration stating that the Court does not have jurisdiction unless all parties to a given treaty who may be affected by the Court's decision are also parties to the case before the Court.

Finally, certain States exclude some specific issues or categories of issues from the jurisdiction of the Court, such as territorial and maritime disputes, disputes concerning their armed forces or disputes between members of the British Commonwealth of Nations.

The importance of such conditions is increased by the principle of reciprocity which expressly or by implication attaches to all declarations of acceptance of the Court's compulsory jurisdiction. This means that, where a dispute arises between two or more States that have made a declaration, the reservations made by any one of them can be relied upon against it by all the others. In other words, the Court's jurisdiction over the case is restricted to those classes of dispute that have not been excluded by any of them. If, for instance, there are two States, one of which has accepted the compulsory jurisdiction of the Court only in respect of disputes arising after the date of its acceptance of such compulsory jurisdiction, namely 1 February 2001, and the other State has excluded disputes relating to situations or facts prior to 21 August 2008, the ICJ, irrespective of which State was the applicant, would have jurisdiction only to hear cases arising after this latter date.

Some 86 States have been parties to cases before the ICJ

Since the Court's jurisdiction is founded on the consent of States, it is their will which in the final analysis determines the extent of that jurisdiction and how often recourse is had to the Court. In practice, since the creation of the ICJ 86 States have been parties to contentious proceedings, distributed as follows: Africa 23, Latin America 16, Asia 13, Europe and other States 34. They have submitted a total of 127 cases to the ICJ, about a third by special agreement, a third on the basis of a declaration accepting the compulsory jurisdiction of the Court and a third under a compromissory clause in a treaty.

In considering whether or not sufficient use has been made of the PCIJ and the ICJ, it is worth recalling that the two Courts were not created in order to resolve all international conflicts, but only certain disputes of a legal nature. While the United Nations Charter requires States to settle their differences by peaceful means, it expressly leaves the choice of means to them (see Articles 33 and 95).

States that have been parties in cases between 1946 and December 2013

Albania
Argentina
Australia
Bahrain
Belgium
Benin
Bolivia, Plurinational State of
Bosnia and Herzegovina
Botswana
Brazil
Bulgaria
Burkina Faso
Burundi
Cambodia
Cameroon
Canada
Chad
Chile
Colombia
Congo, Republic of
Costa Rica
Croatia
Democratic Republic of the Congo
Denmark
Djibouti
Dominica, Commonwealth of
Ecuador
Egypt
El Salvador
Ethiopia
Finland
France
Georgia
Germany
Greece
Guatemala
Guinea
Guinea-Bissau
Honduras
Hungary
Iceland
India
Indonesia
Iran, Islamic Republic of
Israel
Italy
Japan
Lebanon
Liberia
Libyan Arab Jamahiriya
Liechtenstein
Macedonia, the former Yugoslav Republic of

Only in cases terminated by discontinuance.
These States did not take part in the proceedings.
Currently known as Libya.
Previously known as the Federal Republic of Yugoslavia and then as Serbia and Montenegro.

Malaysia
Mali
Malta
Mexico
Namibia
Nauru
New Zealand
Nicaragua
Niger
Nigeria
Netherlands
Norway
Pakistan
Paraguay*
Peru
Portugal
Qatar
Russian Federation
Rwanda
Senegal
Serbia*
Singapore
Slovakia
South Africa
Spain
Sweden
Switzerland
Thailand
Tunisia
Turkey*
Uganda
United Kingdom
United States of America
Uruguay

The PCIJ had itself pointed out that judicial settlement "is simply an alternative to the direct and friendly settlement of . . . disputes between the parties". It is open to the latter, moreover, to resolve such conflicts without actually having recourse to the Court but by basing themselves on the Court's decisions in analogous cases (see below p. 77). What is essential is that the overall purpose — pacific settlement — be achieved. The UN General Assembly took account of these principles when discussing the role of the ICJ in the years 1970 to 1974 (see above p. 26). Concluding that it was desirable that better use be made of the Court, it recalled in its resolutions 3232 (XXIX), 3283 (XXIX) and 37/10 (Declaration of Manila on the Peaceful Settlement of International Disputes, adopted on 15 November 1982) that recourse to judicial settlement in respect of a dispute ought not to be considered an unfriendly act. As stated above (see p. 32), in 1989 the Secretary-General had already set up a Trust Fund to Assist States in the Settlement of Disputes through the Court. This Fund is now open to States not only in cases where the Court is seised by special agreement, but, more generally, in all cases where there is not, or is no longer, any challenge by them to the jurisdiction of the Court (or to the admissibility of the application).

Agents, counsel and advocates

States have no permanent representatives accredited to the ICJ. They normally communicate with the Registrar through their minister for foreign affairs or their ambassador in The Hague. Where they are parties to a case they are represented by an agent. A State filing a special agreement or an application must at the same time notify the Court who is to represent it as its agent, whilst the other party must do so on receipt of notification of the filing of the agreement or application or, failing this, as soon as possible thereafter. Often, the agent of a government is its ambassador in The Hague or a senior civil servant, such as the legal adviser to the ministry of foreign affairs. Where the agent is not the ambassador, his or her signature must be formally certified. An address for service at The Hague must be given. Parties in the same interest may employ separate agents or a common agent. The function of an agent, and his or her rights and obligations, are analogous to those of a solicitor or *avoué* with respect to a municipal court. In international terms, his or her role may be likened to that of the head of a special diplomatic mission, with power to bind a sovereign State. The agent receives communications from the Registrar relating to the case and transmits to the Registrar all correspondence and written pleadings, duly signed or certified. At public hearings, it is the agent who opens the argument, files the submissions and executes any formal act required of his or her government. The agent may also deliver a substantial part of the oral argument, although he is not bound to do so.

The agent is sometimes assisted by a co-agent, a deputy agent or an additional agent, and he always has counsel or advocates to assist in the preparation of the written pleadings and the delivery of oral argument. The Court must be informed of their names, which may be done at any time in the course of the proceedings. Since there is no special ICJ Bar, there are no conditions that have to be fulfilled for counsel or advocates to enjoy the right of appearing before it, except only that they must have been appointed by a government to do so. Counsel are not required to possess the nationality of the State on behalf of which they appear, and are chosen from among those practitioners, professors of international law and jurists of all countries who appear most qualified to present the views of the parties. In practice, they form a group of specialists which was once fairly limited, but which is now tending to expand. From 1946 to 2010 some 200 individuals appeared as counsel before the Court, of which a group of around 30 appeared in several cases. Their fees normally constitute the chief expense of a State appearing before the ICJ. In order to contribute towards the reduction of such costs, the 1978 Rules (see p. 18 above) authorize the Court, if necessary, to determine "the number of counsel and advocates to be heard on behalf of each party". Experience has shown that an agent need not necessarily be assisted by a large team. The Court has further adopted two Practice Directions (see p. 18 above) for use by States appearing before it, in order to guide them in their choice of individuals qualified to represent them before the Court. In particular, the Court invites the parties to refrain from designating as agent, counsel or advocate in a case before it a person who is sitting as judge *ad hoc* in another case before the Court (Practice Direction VII), or any person who has served as a Member of the Court, judge *ad hoc*, Registrar, Deputy-Registrar or higher official of the Court in the three years preceding the date of the designation (Practice Direction VIII).

Agents, counsel and advocates enjoy the privileges and immunities necessary to the independent exercise of their functions. They must be able to communicate and travel freely, and for this purpose the ministry of foreign affairs of the country where the Court is sitting is informed of their names.

> A list of States to which the ICJ is open is published each year in the *I.C.J. Yearbook*, while the list of instruments governing the Court's jurisdiction, as well as the texts of declarations of acceptance of the Court's compulsory jurisdiction, are published on the Court's website (www.icj-cij.org). The texts of compromissory clauses are to be found in the relevant treaties or conventions in the *United Nations Treaty Series*.

4. The Proceedings

Since the very existence of an international arbitral tribunal results from the will of the parties, it is those parties who necessarily have a large say in the drawing up of its rules of procedure. The PCIJ, by contrast, was established as a permanent court, and hence its founders felt it proper to establish a predetermined body of rules, known in advance to all concerned, to govern its proceedings. They had available to them for this purpose a limited number of precedents culled from the practice of arbitral tribunals, but they also to a large extent had to break new ground. They had to devise a procedure capable of satisfying the sense of justice of the greatest possible number of potential litigants and of placing them on a footing of strict equality. The Court needed both to be trusted and to trust. Accordingly, the first Members of the PCIJ opted for rules which combined simplicity and an absence of formalism and which were flexible in their application. By successive adjustments, the Court managed to achieve a rough balance between these requirements. This balance has been preserved by the ICJ, which has been extremely cautious in changing the rules laid down by its predecessor.

Proceedings are instituted by the parties to the case or by one of them

At the ICJ, a distinction must be drawn between proceedings instituted through the notification of a special agreement and those instituted by means of a unilateral application (see above pp. 35-39).

— A special agreement is of a bilateral (or multilateral) nature and can be lodged with the Court by either or both (or all) of the States parties to the proceedings. The special agreement must indicate the subject of the dispute and the parties thereto. Since there is neither an "applicant" State nor a "respondent" State, in the Court's publications their names are separated by an oblique stroke at the end of the official title of the case (e.g., *Benin/Niger*).

— An application, which is of a unilateral nature, is submitted by an applicant State against a respondent State. It is intended to be communicated to the latter State, and the Rules of Court contain stricter requirements with respect to its content. In addition to the name of the party against which the claim is brought and the subject of the dispute, the applicant State must, as far as possible, indicate briefly on what basis — a treaty or convention, or declaration of acceptance of compulsory jurisdiction — it claims the Court has jurisdiction, and must succinctly state the facts and grounds on which it founds its claim. At the end of the official title of the case the names of the two parties are separated by the abbreviation *v.* (for the Latin *versus*) — e.g., *Nicaragua v. Colombia*.

The special agreement or application is normally signed by the agent (see pp. 45-47 above) and is generally accompanied by a covering letter from the minister for foreign affairs or the ambassador to the Netherlands. It may be drafted in English or French. A person authorized by the government concerned, usually the ambassador to The Hague or the agent, sends the document to the Registrar or hands it to him personally. The Registrar, after verifying that the formal requirements of the Statute and of the Rules have been complied with, transmits it to the other party and to the Members of the Court, has it entered in the Court's General List, and informs the press by means of a brief press release. After being duly registered, translated and printed, a bilingual version of the agreement or application is then sent to the Secretary-General of the United Nations and to all States to which the Court is open, as well as to any person who requests it. The institution of proceedings is thus well publicized. The date thereof, which is that of the receipt by the Registry of the special agreement or application, marks the opening of proceedings before the Court.

It is often some time after a dispute arises between the States concerned that it is submitted to the Court. This pre-litigation phase, during which the States concerned discuss and consider the issue, may last for years. Nevertheless, many disputes — which must of their very nature be extremely complex, since otherwise they would have been settled between the parties — have not yet been fully clarified, at least in terms of the points of law at issue, when the dispute is brought before the Court, and continue to require lengthy study by the parties themselves throughout the course of the proceedings. It is particularly noteworthy in these circumstances that the average duration of cases argued before the ICJ, from the institution of proceedings to the delivery of final judgment, is only four years. Many cases have in fact been decided far more rapidly, some even within a year (*Appeal Relating to the Jurisdiction of the ICAO Council*; *Aerial Incident of 10 August 1999 (Pakistan v. India)*; *Request for Interpretation of the Judgment of 11 June 1998*; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico v. United States of America)*). Factors specific to certain cases, such as the number of written pleadings and the time requested by the parties for their preparation, or the frequency of incidental proceedings, mainly account for their length. The Court's control over such factors is relatively limited, but it has as far as possible had regard to them when revising its Rules or reviewing its procedures (resulting, for example, in the issue of Practice Directions; see above p. 18).

The proceedings are first written and then oral

Combining the two types of procedure that are traditionally used to varying degrees around the world, the Statute of the Court provides that proceedings before the Court shall be in two phases: a written phase and an oral phase. The Court has applied this division flexibly, allowing for greater or lesser emphasis on each phase according to the case and taking account of the parties' wishes. Whilst each of the phases of the proceedings has sometimes been subject to criticism, there has never been any agreement as to which might be eliminated. In point of fact, the combination of a relatively lengthy written phase followed by a quite short oral one, as required by the Statute, is highly desirable if the Court is to reach its decision on a fully informed basis. It provides both the parties and the Court with the safeguards required for the sound administration of international justice.

The written proceedings

The first stage of the proceedings involves the submission to the Court of written pleadings containing detailed, adversarial statements of fact and law. One of the reasons why cases tend to be very fully pleaded is the need to satisfy the Court as a whole and each of its Members individually, in other words, to satisfy 15 judges coming from different legal backgrounds. Normally the parties' arguments must be supported by documents annexed to the pleadings, but if these are too lengthy, only extracts need be attached. Two copies of the full text of any document not already in the public domain are deposited in the Registry, where they are available to Members of the Court and the other party for consultation. The Court may itself call for documents or explanations during the written proceedings (see, for example: *Corfu Channel*; *Rights of Nationals of the United States of America in Morocco*; *Monetary Gold Removed from Rome in 1943*; *United States Diplomatic and Consular Staff in Tehran*; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie* (Provisional Measures); *Ahmadou Sadio Diallo*).

When proceedings are instituted by means of an application, the President meets the agents of the parties as soon as possible after their appointment in order to ascertain their views with respect to the number and the order of filing of the written pleadings and the time-limits within which they are to be filed. A decision thereon is then taken by the Court, or by the President himself if the Court is not sitting, having regard to the parties' views in so far as this would not cause unjustified delay. That decision is embodied in an Order, which is made on average about a month after the institution of proceedings. In principle, two pleadings are filed: "a Memorial by the applicant [and] a Counter-Memorial by the respondent". If the parties so request, or if the Court deems it necessary, there may also be a Reply and Rejoinder, which "shall not merely repeat the parties' contentions, but shall be directed to bringing out the issues that still divide them". It has become increasingly common for authorization to be given for the filing of a Reply and Rejoinder, although it is not granted in all cases (see *Fisheries Jurisdiction (Spain v. Canada)*; *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*). The time-limits fixed for the filing of written pleadings, which "shall be as short as the character of the case permits", are normally the same for each party. The Court may extend those time-limits at the request of one of the parties, but only if it "is satisfied that there is adequate justification for the request".

The words between inverted commas in the preceding paragraph are taken from the 1978 Rules (as amended in 2000; see p. 18 above), which take account of the views of numerous commentators. Previously the number of pleadings had normally been four instead of two (the *Haya de la Torre* case was an exception) and they had become extremely voluminous. Even where relatively long time-limits were requested (in general from three to six months for each pleading, but sometimes as much as a year or more), the Court felt it difficult not to take account of the wishes expressed by the representatives of sovereign States, who were concerned to set forth their case at proper length and with due and proper care. The Court had also felt itself obliged to agree to requests for extensions that in some cases amounted to as much as a year or 18 months, thereby nearly doubling the originally estimated time for the written proceedings. The latitude thus granted to parties gradually contributed to an excessive increase in the duration of cases, something which the Court noted with regret in an Order made by it in 1968. The time-limits requested by the parties are still often quite long.

When a case is brought before the Court or a Chamber of the Court by notification of a special agreement, the parties themselves usually fix in the special agreement the number and order of filing of the pleadings — although that is not binding on the Court. In recent cases, the parties have agreed to each submit a Memorial and a Counter-Memorial, followed by a further pleading if necessary. They have also agreed upon certain time-limits. The Court, as far as possible, takes account of the wishes of the parties on these points (see Articles 46 and 92 of the Rules). Hence Replies were filed in the cases concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, the *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, the *Land, Island and Maritime Frontier Dispute*, the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, the *Gabčíkovo-Nagymaros Project*, *Kasikili/Sedudu Island*, *Sovereignty over Pulau Ligitan and Pulau Sipadan*, and *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, but only Memorials and Counter-Memorials were submitted in the two *Frontier Dispute* cases (*Burkina Faso/Republic of Mali* and *Burkina Faso/Niger*). With respect to the order in which pleadings are filed in cases brought by special agreement, the Court "wishes to discourage the practice of simultaneous deposit of pleadings" (Practice Direction I), the practice of consecutive filings favouring a direct and more in-depth exchange between the parties from the outset of the written phase. However, parties frequently prefer a simultaneous exchange of pleadings, given that there is neither applicant nor respondent.

Two signed originals of each pleading are delivered by the agent to the Registrar, together with 125 copies for the use of the other party, Members of the Court and the Registry. Whether filed in printed form (which is generally no longer the case) or in a digital version, pleadings must as far as possible conform to the format recommended by the Court. The parties may now choose either to file all the additional copies of their pleadings in paper form or to file 75 copies on paper and 50 on CD-ROM. The pleadings and their annexes may be filed in either English or French, or in a combination of these two languages. They may also be wholly or partly in a third language, provided that a certified translation into English or French is attached. The Registry makes an unofficial translation into the other official language of the Court for use by the judges. After the views of the parties have been ascertained, the Court may communicate the pleadings to the government of any State that is entitled to appear before it. It is usual, after consultation with the parties, for the pleadings to be made available to the press and the public as from the opening of the oral proceedings or subsequently, inter alia by being posted on the Court's website.

Faced with an increase in the volume of the pleadings filed by the parties and a proliferation in the number of documents annexed thereto, the Court has issued a Practice Direction for the use of States appearing before it, in which, *inter alia*, it urges the parties "to keep the written pleadings as concise as possible" and to "append to their pleadings only strictly selected documents" (Practice Direction III).

In each of the pleadings that it files, a party indicates its "submissions" (French: *conclusions*) at that stage of the case. These "submissions", a concept borrowed by international arbitral and judicial practice from the legal systems of Civil Law countries and unknown in this form in Common Law countries, are a concise statement of precisely what the party in question is asking the Court to adjudge and declare on the basis of the facts it has alleged and the legal grounds it has adduced, in respect not only of the original claim but also of any counter-claim. In principle they do not include any recital, however brief, of the aforesaid facts and arguments. They define the scope of the claim and the framework within which the Court will have to reach its decision. The Court's task is thus:

> "not only to reply to the questions as stated in the final submissions of the parties, but also to abstain from deciding points not included in those submissions" (*Right of Asylum, Judgment, I.C.J. Reports 1950*, p. 402).

The oral proceedings

Once all the written pleadings have been filed, the case is ready for hearing, that is to say, for oral argument. In principle there is an interval of a few months before the oral proceedings begin. The date for their opening is decided by the Court, taking account of its schedule and, as far as possible, the scheduling requests of the parties, their representatives, agents, counsel and advocates, who need a certain amount of time to prepare their oral presentations.

Unlike arbitral tribunals, the sittings of the ICJ are open to the public unless the parties ask for the proceedings to be _in camera_, or the Court so decides of its own motion. Press releases are issued announcing that public sittings are to be held and these generally take place each morning from 10 a.m. to 1 p.m., or in the afternoon from 3 p.m. to 6 p.m., in the Great Hall of Justice on the ground floor of the Peace Palace. Judges wear a black gown and a white jabot, as does the Registrar, who sits with the judges. Agents and counsel for the parties, who are traditionally dressed in accordance with the practice of the courts in their own countries, face the Court. In proceedings instituted by an application, the applicant State is on the President's left and the respondent State on his or her right; in proceedings instituted by the notification of a special agreement, the party which is to speak first is on the President's left and the other on his or her right. Arrangements are made to enable press and television to follow the proceedings.

The parties address the Court in the order in which they have filed their pleadings or, in cases submitted under a special agreement, in the order fixed by the Court after consulting the agents of the parties. Normally each party has two rounds of oral argument. The Court may be addressed in either of its official languages; it is not required that all argument be in a single language nor that all of a party's representatives use the same language. Everything spoken in English is interpreted into French and vice versa. Interpretation was consecutive until 1965 and since then has been simultaneous. Should counsel wish to use a language other than the Court's two official languages (e.g., *_S.S. "Wimbledon"_ and *_Rights of Minorities in Upper Silesia_ cases: German; *_Borchgrave_ and _Barcelona Traction_ cases: Spanish; *_Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie_: Arabic), the party concerned is required to inform the Registrar in advance and must itself make provision, under the supervision of the Registrar, for consecutive interpretation into English or French. It is that interpretation which is reproduced in the verbatim record of the hearing. As frequently happens in the principal organs of the United Nations, those addressing the Court, many of whom are not using their mother tongue, often read from a prepared text, giving the Registry a copy before each hearing so as to ensure that the speakers are interpreted as accurately as possible and to facilitate the conduct of the hearings. Oral argument is recorded in the original official language and a transcript is issued by the Registry in the form of a provisional verbatim record of the proceedings, which is distributed a few hours afterwards. After those who have spoken have checked it for accuracy (under the supervision of the Court), this corrected verbatim record then constitutes the authentic record of the proceedings. The Registry prepares an unofficial translation of the provisional verbatim record in the Court's other language, which is distributed several days after the sitting.

Hearings generally last for two or three weeks, though in the *Barcelona Traction* case there were 64 sittings, in the *South West Africa* case 102, in the case concerning the *Land, Island and Maritime Frontier Dispute* there were 50 and in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* there were 56 sittings. The sittings are under the control of the Court and, in particular, of the President. He consults his or her colleagues and ascertains the views of the parties' agents, whom he will meet, if necessary, before the opening of the hearings, or during them. Where required, Orders are made concerning the conduct of the proceedings. So far as the actual content of what is said is concerned, the ICJ has up to the present felt it better to refrain as far as possible from giving instructions to the representatives of sovereign parties. However, under Article 61 (1) of the Rules,

> "[t]he Court may at any time prior to or during the hearing indicate any points or issues to which it would like the parties specially to address themselves, or on which it considers that there has been sufficient argument".

Article 61 (2) authorizes the Court to put questions during the hearing on points that seem to it to require explanation, while under Article 62 (1) it may at any time call upon the parties to produce further information or documentation; but in practice the Court has seldom availed itself of this possibility (cases where it has done so include: *Corfu Channel*; *Ambatielos*; *United States Diplomatic and Consular Staff in Tehran*; *Military and Paramilitary Activities in and against Nicaragua*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; *Ahmadou Sadio Diallo*).

By contrast, the right of individual judges under the third paragraph of Article 61 to put question to the parties at the hearing is often used (see, for example, *Gabčíkovo-Nagymaros Project*; *Kasikili/Sedudu Island*; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*; *LaGrand*; *Oil Platforms*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge*; *Dispute regarding Navigational and Related Rights*; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals; *Application of the International Convention on the Elimination of All Forms of*

Racial Discrimination; Questions relating to the Obligation to Prosecute or Extradite; Certain Activities Carried Out by Nicaragua in the Border Area; Whaling in the Antarctic). However, the judges do not put their questions until after they have informed the President and their colleagues of their intention to do so, which can often give rise to a brief internal debate. In general, those addressing the Court have practically no guidance other than the dual need to answer the other side and to leave nothing out that might serve to support their own case.

This conception of the oral proceedings that has been developed by the Court and the parties has been criticized, even by governments, as tending towards a reiteration of what has already been set forth in the written pleadings. For this reason, the Rules of 1978, as amended in 2000, provide:

> "The oral statements made on behalf of each party shall be as succinct as possible within the limits of what is requisite for the adequate presentation of that party's contentions at the hearing. Accordingly, they shall be directed to the issues that still divide the parties, and shall not go over the whole ground covered by the pleadings, or merely repeat the facts and arguments these contain." (Art. 60, para. 1.)

In its Practice Direction VI, the Court, citing the first paragraph reproduced above, "requires full compliance [by the parties] with these provisions and observation of the requisite degree of brevity". The Court explains, in that context, that it "will find it very helpful if the parties focus in the first round of the oral proceedings on those points which have been raised by one party at the stage of the written proceedings but which have not so far been adequately addressed by the other, as well as on those which each party wishes to emphasize by way of winding up its arguments".

So far as the examination of evidence is concerned, the ICJ, which has power to make all necessary arrangements for this, tries to avoid a formalistic approach, co-operating with the parties and taking account of the different conceptions they may have of this matter. It is consequently more flexible in the admission of evidence than certain domestic courts, though reserving its right to reconsider the issue during its deliberations in the case. The Court's judgments often contain detailed explanations of the way it has handled the evidence presented by the parties, having regard to the nature of this evidence and to the circumstances of the case (see, for example, *Military and Paramilitary Activities in and against Nicaragua; Land, Island and Maritime Frontier Dispute; Gabčíkovo-Nagymaros Project; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro); Pulp Mills on the River Uruguay; Application of the International Convention on the Elimination of All Forms of Racial Discrimination*).

— Matters of fact, which frequently are not in issue as between the parties, are in general proved by documentary evidence, such evidence normally forming part of the written pleadings. The Court's current approach to evidence places the major emphasis on documentary material. Once the written proceedings have concluded, new documents can only be submitted in exceptional circumstances and provided this will not delay the proceedings. On this point, the Court has explained in Practice Direction IX that, where a party wishes to submit a new document after the closure of the written proceedings, "it shall explain why it considers it necessary to include the document in the case file and shall indicate the reasons preventing the production of the document at an earlier stage". New documents must normally be filed in 125 copies. The Registrar then forwards the new documents to the other party and asks for its views. If there is no objection, the Court will normally admit the new documents. Should there be an objection to them, the Court itself will decide the matter and will only accept a document "if it considers the document necessary". During the oral proceedings, no reference may be made by the parties to the contents of any new document which neither forms part of a readily available publication nor has been submitted to the Court in accordance with the above provisions.

In the practice of the PCIJ and the ICJ there have been relatively few examples of oral testimony by witnesses or experts. Cases where such testimony has been given include: *Certain German Interests in Polish Upper Silesia*; *Temple of Preah Vihear*; *South West Africa*; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*; *Delimitation of the Maritime Boundary in the Gulf of Maine Area*; *Continental Shelf (Libyan Arab Jamahiriya/Malta)*; *Military and Paramilitary Activities in and against Nicaragua*; *Elettronica Sicula S.p.A. (ELSI)*; *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; *Whaling in the Antarctic*. In hearing witnesses or experts called by either of the parties, without necessarily considering itself bound by any particular practice the Court has so far followed a procedure akin to that used in many Common Law jurisdictions: an examination-in-chief by the representatives of the party calling the witness, followed by a cross-examination by the representatives of the other party, a re-examination by the former and replies to any question put by the President or Members of the Court. Evidence may be given in a language other than English or French, in which case the same conditions apply as for oral argument (see, for example, *Corfu Channel*; *Land, Island and Maritime Frontier Dispute*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*). In such cases it is the statement signed by the witness or expert, as translated into one of the Court's official languages, which is reproduced in the verbatim report of the hearing. The Court is itself empowered to call witnesses but has never done so. It can also appoint experts to prepare a report for it (*Factory at Chorzów*; *Corfu Channel*), order an investigation *in loco* (*Corfu Channel*) or itself make an inspection *in loco* (*Diversion of Water from the Meuse*; *Gabčíkovo-Nagymaros Project*). In the *Free Zones of Upper Savoy and the District of Gex* and *South West Africa* cases, the Court declined requests that it carry out such an inspection. The Chambers constituted by the Court also have this power: for example, an expert was appointed by the Chamber formed in the *Delimitation of the Maritime Boundary in the Gulf of Maine Area* case, to assist it in examining the technical aspects, whereas the Chamber formed to deal with the case concerning the *Land, Island and Maritime Frontier Dispute* did not consider it necessary to visit the disputed areas, or to order an investigation or call upon expert assistance.

— Parties have always made use, under the appropriate control of the Court, of the latest techniques for the purposes of supporting or illustrating their arguments at the hearings, ranging from the production of maps, photographs and models (*Diversion of Water from the Meuse*) to the presentation of videos and other audio-visual material (*Temple of Preah Vihear*; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*). With respect to material not produced during the written phase, the Court's practice is that a party wishing to present a film or other audio-visual material at the hearings must inform the Court sufficiently in advance, allowing the other party the opportunity to view the material in question beforehand and to express an opinion with regard to its presentation. In order to enable it to take a decision on the presentation of such material, the Court recently stipulated, in Practice Direction IX *quater*, that the party concerned must explain why it wishes to present the material in question and provide a variety of information as to the source of the material, the circumstances and date of its making, the extent to which it is available to the public and, wherever relevant, the geographical coordinates of the location where it was taken.

After the conclusion of oral argument on behalf of each party, each agent reads out his or her final submissions, handing a signed text thereof to the Registrar. At the close of the last public sitting, the President asks the agents to hold themselves at the disposal of the Court. If need be, replies to questions put by the Court, or by individual judges, may subsequently be forwarded in writing to the Registry, and may then be the subject of written comments by the other party. The Court may put further written questions to the parties after the closure of the hearings. The replies, as well as any written observations thereon, are duly communicated to the Members of the Court and to each party.

In this case, however, the appointment of an expert and his duties were provided for in the special agreement. His report was appended to the Chamber's judgment.

A case may involve preliminary objections or other incidental proceedings

The procedure described above is the normal procedure that is followed before a full Bench of the Court or its Chamber. We must, however, now consider incidental proceedings, which, just as in municipal courts, can affect the course of the main proceedings.

Preliminary objections

The most common incidental proceeding is where preliminary objections are raised, generally by the respondent State in the case of proceedings instituted by an application. Such objections seek to suspend any consideration by the Court of the merits of the case, on the ground that:

— the Court lacks jurisdiction *ratione personae*, because one of the parties lacks capacity to appear before the Court, for example where the respondent State is not a party to the Statute of the Court or otherwise bound by a special provision contained in treaties in force as provided in paragraphs 1 and 2 of Article 35 of the Statute*;

— the Court lacks jurisdiction *ratione materiae* under the terms of the compromissory clause of a treaty or convention, or the declaration of acceptance of the Court's compulsory jurisdiction, pursuant to which the applicant State has brought the case before the Court. The respondent State may, for example, contend that the treaty or declaration of acceptance is null and void or no longer in force; that the dispute predates the time to which the treaty or declaration applies; or that the dispute is not covered for some other reason (for example, because a reservation attached to the declaration excludes the dispute in question);

— that, even if the Court did have jurisdiction, it could not exercise it because the application is inadmissible on more general grounds. It may be contended that certain essential provisions of the Statute or of the Rules have not been complied with; that the dispute does not exist, has become moot, relates to a non-existent right or is not of a legal nature within the meaning of the Statute; that the judgment would be without practical effect or would be incompatible with the role of a court; that the applicant State lacks capacity to act, has no legal interest in the case or has not exhausted the possibility of negotiations or other preliminary procedures; that the applicant is alleging facts which come within the province of a political organ of the United Nations; or, indeed, that the private party whom the applicant State is seeking to protect does not hold the nationality of that State or has not exhausted the local remedies available to him in the respondent country; or

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* 1. The Court shall be open to the States parties to the present Statute.

2. The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

— that there is some other ground for putting an end to the proceedings. It may be argued that the dispute brought before the Court involves other aspects of which it is not seised; that the applicant has failed to bring proceedings against certain parties whose presence is essential; or that certain negotiating procedures have not been exhausted, etc.

The matter is one for the Court itself to decide, since it has jurisdiction to determine its own jurisdiction. According to Article 36, paragraph 6, of the Statute: "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." The procedure to be followed is laid down in Article 79 of the Rules. Where a respondent State wishes to raise one or more preliminary objections, it must do so in writing as soon as possible, and not later than three months after the delivery of the Memorial. The written proceedings on the merits are then suspended and written and oral proceedings on the preliminary objection(s) are initiated. They constitute a distinct phase of the case, a sort of proceeding within the proceedings. An Order is made fixing a time-limit within which the applicant State must submit its written observations and submissions, in other words, its answer to the objection(s). In Practice Direction V, the Court states that, with a view to expediting proceedings, that period shall generally not exceed four months. A series of public sittings is then held similar to those described above, although shorter, since, as Practice Direction VI makes clear, they are strictly limited to the issues raised by the preliminary objection(s).

Mention should be made here of the provision in the second paragraph of Article 79 of the Rules, whereby, following submission of the application and after the President has consulted the parties, the Court may decide that questions of jurisdiction and admissibility shall be determined separately. In that case, which occurs quite often (most recent examples: *Aerial Incident of 10 August 1999 (Pakistan v. India)*; *Armed Activities on the Territory of the Congo (New Application : 2002) (Democratic Republic of the Congo v. Rwanda)*), the Court rules *in limine* on the issue, that is to say, before any proceedings on the merits.

The Court then deliberates and delivers a judgment in the usual way (see below pp. 69-76). There are three possible outcomes, and three only.

Some of these grounds may, in some cases or according to some views, also support objections to jurisdiction or some other form of claim for dismissal. International tribunals have always adopted a pragmatic approach to the matter.

Some of these grounds may, in some cases or according to some views, also support objections to jurisdiction or admissibility.

- the Court upholds at least one of the preliminary objections and the case will then come to an end, leaving open the possibility that it may be resumed one day if the ground on which the preliminary objection was upheld no longer applies (e.g., domestic remedies are finally exhausted);
- the Court rejects all the preliminary objections and the proceedings on the merits will resume at the point at which they were suspended; the respondent will then be called upon to deliver its Counter-Memorial within a certain time;
- the Court declares that the objections do not possess an exclusively preliminary character and the proceedings will be resumed in order to enable the Court to rule on all the issues put before it.

While this represents the general picture, certain variants are possible:

- The respondent State withdraws its preliminary objection(s) (e.g., *Rights of Nationals of the United States of America in Morocco*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*).
- The respondent State contests the jurisdiction of the Court or the admissibility of the claim in its written pleadings or in oral argument but does not do so by means of a formal preliminary objection; the Court will then deal with this issue at the merits stage if necessary (e.g., **Rights of Minorities in Upper Silesia*; *Nottebohm*; *Appeal Relating to the Jurisdiction of the ICAO Council*; *LaGrand*; *Arrest Warrant of 11 April 2000*; *Avena and Other Mexican Nationals*; *Certain Questions of Mutual Assistance in Criminal Matters*; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals; *Application of the Interim Accord of 13 September 1995*; *Questions relating to the Obligation to Prosecute or Extradite*; *Whaling in the Antarctic*).
- The Court on its own initiative considers a preliminary issue that has not formed the subject of a formal objection (e.g., **Serbian Loans*; **Prince von Pless Administration*; *South West Africa*; *Nuclear Tests*; *United States Diplomatic and Consular Staff in Tehran*).
- The parties by agreement ask the Court to rule on preliminary objections, or other issues raised regarding jurisdiction and/or admissibility, at the same time as the merits, which the Court is then bound to do (see, for example, *Certain Norwegian Loans*; *Elettronica Sicula S.p.A. (ELSI)*; *East Timor*). Before the 1972 revision of the Rules, the Court could itself decide that preliminary objections should be joined to the merits (**Prince von Pless Administration*; **Pajzs, Csáky, Esterházy*; **Losinger*; **Panevezys-Saldutiskis Railway*; *Right of Passage over Indian Territory*; *Barcelona Traction*). In 1972, it was decided to limit this possibility. The new provision stipulates that only those objections that do not possess an exclusively preliminary character may now be decided

at the merits stage (e.g., *Military and Paramilitary Activities in and against Nicaragua*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*; *Land and Maritime Boundary between Cameroon and Nigeria*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*).

- The applicant State itself raises a preliminary objection within the time-limit laid down for the delivery of its Memorial; such preliminary objection will then be dealt with in exactly the same way as if it had been raised by the respondent State (e.g., *Monetary Gold Removed from Rome in 1943*).
- In a case brought under a special agreement, where there is no applicant or respondent, either party may raise preliminary objections (see **Borchgrave*).

Since the dissolution of the PCIJ, preliminary objections have become more frequent, and proportionately more of them have been successful. Some critics have even gone so far as to speak in this connection of formalism and timidity, but this is to forget, first, that the ICJ, whose jurisdiction is not compulsory, has to be particularly careful not to go beyond the limits laid down for it by governments and, secondly, that preliminary objections are an essential safeguard available to litigants in all procedural systems. Since 1946, preliminary objections have been formally raised in 42 cases and have been successful in about two-thirds of them. Even where rejected, they have ultimately delayed the final decision of the case by more than a year.

Non-appearance

The Statute also makes provision for cases where the respondent State does not appear before the Court, either because it totally rejects the Court's jurisdiction or for any other reason (Art. 53). Hence failure by one party to appear does not prevent proceedings in a case from taking their course, in keeping with the principle of the equality of the parties, which requires that neither party should be penalized through the attitude adopted by the other. But in a case of this nature, the Court must satisfy itself that it has jurisdiction, taking all relevant matters into account. If it concludes that it does have jurisdiction, it must determine whether the claim of the applicant State is well-founded in fact and law, while having regard to the fact that, in proceedings which are of a largely adversarial nature, it does not have available to it the factual and legal matters normally relied on by the respondent to dispute the applicant's claims. The Court then organizes written and oral proceedings, in which the applicant State participates, and delivers a judgment. In some cases the respondent has failed to appear at every stage of the proceedings (*Fisheries Jurisdiction*; *Nuclear Tests*; *Aegean Sea Continental Shelf*; *United States Diplomatic and Consular Staff in Tehran*). In others, only during certain phases (*Corfu Channel* (Assessment of Amount of Compensation); *Anglo-Iranian Oil Co.*, *Interim Protection*; *Nottebohm*, (Preliminary Objection); *Military and Paramilitary Activities in and against Nicaragua*, *Merits* (Form and

Amount of Reparation). Sometimes, following the respondent's non-appearance, the applicant State has decided, for various reasons, to discontinue the proceedings (**Denunciation of the Treaty of 2 November 1865 between China and Belgium*; **Polish Agrarian Reform and German Minority*; **Electricity Company of Sofia and Bulgaria*; *Trial of Pakistani Prisoners of War*).

Provisional measures

If at any time it considers that the rights which form the subject of its application are in immediate danger, the applicant State may request the Court to indicate provisional measures to protect its rights. The respondent also has a similar right, although it is less often used (see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; *Pulp Mills on the River Uruguay*, etc.), as do also the parties to proceedings instituted by special agreement (see *Frontier Dispute (Burkina Faso/Republic of Mali)*, etc.). Where appropriate, the President may then call upon the parties to refrain from any acts that might jeopardize the effectiveness of any decision the Court may take on the request (see, for example, **Prince von Pless Administration*; **Electricity Company of Sofia and Bulgaria*; *Anglo-Iranian Oil Co.*; *United States Diplomatic and Consular Staff in Tehran*; *Military and Paramilitary Activities in and against Nicaragua*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*; *Vienna Convention on Consular Relations*; *LaGrand*; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination*). In any event, urgent proceedings (generally oral) are held, taking priority over all others, in order to ascertain the views of the parties. These constitute a separate phase of the case and in general lead to a decision within three to four weeks, though this can also be much more rapid (e.g., *LaGrand*: 24 hours). The decision of the Court is embodied in an Order, which is read out by the President at a public sitting.

The Court may decline to indicate provisional measures (e.g., **Factory at Chorzów*; **Legal Status of the South-Eastern Territory of Greenland*; **Polish Agrarian Reform and German Minority*; *Interhandel*; *Trial of Pakistani Prisoners of War*; *Aegean Sea Continental Shelf*; *Arbitral Award of 31 July 1989*; *Passage through the Great Belt*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) (Libyan Arab Jamahiriya v. United States of America)*; *Arrest Warrant of 11 April 2000*; *Certain Criminal Proceedings in France*; *Legality of Use of Force*; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*; *Pulp Mills on the River Uruguay*). Already at this phase of the proceedings the respondent State may contest the Court's jurisdiction or may fail to appear. The Court will indicate provisional measures only if it finds that it has prima facie jurisdiction, that the rights claimed by the applicant State appear to be at least plausible, that there exists a link between the rights whose protection is being sought and the measures requested, that there is a risk of irreparable prejudice and that there is an element of urgency. The Court can indicate measures different from those requested or on its own initiative; it may modify the measures requested if the situation so requires.

Chambers constituted by the Court may also indicate provisional measures, and this was done with particular rapidity in the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)*.

In its Judgment of 27 June 2001 in the *LaGrand* case, the Court expressly stated that Orders indicating provisional measures have binding force.

Counter-claims

In its Counter-Memorial, in addition to defending its position with regard to the claims brought against it by the applicant State, a respondent State may make one or more counter-claims. This procedure enables the respondent to submit a new claim to the Court as a counter to the other party's principal claim. Thus a State against which a violation of international law is alleged can not only deny this, but claim, further, that the applicant is itself responsible for violations in the context of the same case (for recent practice, see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (counter-claims subsequently withdrawn); *Oil Platforms (Islamic Republic of Iran v. United States of America)*; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*; *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*).

Under Article 80 of the 1978 Rules of Court (as amended on 5 December 2000), in order to be admissible and to be eligible to be dealt with at the same time as the relevant principal claim, the counter-claim must come within the Court's jurisdiction and be directly connected with the subject-matter of the principal claim.

Where the counter-claims presented by a party in its Counter-Memorial are declared admissible, the Court normally orders the filing of a Reply and a Rejoinder. To ensure strict equality between the parties, a right is generally reserved for the party replying to the counter-claims to express itself a second time in writing on those claims in an additional pleading (see *Oil Platforms (Islamic Republic of Iran v. United States of America)*; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*).

Joinder of proceedings

The Court may at any time direct that the proceedings in two or more cases be joined where such a joinder appears, in the light of the specific circumstances of each case, to be consonant with the requirements of the sound administration of justice and the need for judicial economy. The PCIJ joined the proceedings in the cases concerning *_Certain German Interests in Polish Upper Silesia_, *_Legal Status of the South-Eastern Territory of Greenland_ and *_Appeals from Certain Judgments of the Hungaro/Czechoslovak Mixed Arbitral Tribunal_. The ICJ joined the proceedings in the _South West Africa_ and _North Sea Continental Shelf_ cases and in the cases concerning _Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)_ and the _Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)_.

For example, cases have been joined where they had the same applicants and respondents (*_Certain German Interests in Polish Upper Silesia_, *_Appeals from Certain Judgments of the Hungaro/Czechoslovak Mixed Arbitral Tribunal_), where they included cross-claims (_Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)_ and the _Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)_), or where the Court found that parties to separate proceedings were acting in the same interest, that is to say, that they were submitting the same arguments and submissions against a common opponent in relation to the same issue. The Court may then issue an order for the proceedings to be joined. The parties, if so entitled, will be allowed to appoint only a single judge _ad hoc_ (see above pp. 25-27) and will submit joint pleadings and oral argument. Only a single judgment will be delivered. The Court may also, without effecting any formal joinder, direct common action in respect of any aspect of the proceedings. Thus, in the cases concerning _Fisheries Jurisdiction_, _Nuclear Tests_, _Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie_ and _Legality of Use of Force_, the cases proceeded in parallel and similar judgments were delivered on the same day, although the proceedings had not been formally joined. In the _Fisheries Jurisdiction_ cases one of the applicant States had a judge of its nationality on the Bench whilst the other had neither a judge of its nationality nor a judge _ad hoc_; in the _Nuclear Tests_ cases the two applicant States appointed the same judge _ad hoc_. In one of the Lockerbie cases, the British Member of the Court considered that he should not take part in the case and the United Kingdom appointed a judge _ad hoc_, who sat in the phase regarding the jurisdiction of the Court and the admissibility of the application; in both cases, the American Member of the Court continued to sit, but passed the presidency to the Vice-President. In the _Legality of Use of Force_ cases, judges _ad hoc_ appointed by those respondents which did not have a judge of their nationality on the Bench sat in the phase of the cases devoted to provisional measures but not in the subsequent phase on preliminary objections.

Intervention

The Statute of the Court (Art. 62) makes it possible for a State to intervene in a dispute between other States so as to protect itself against the possible effects of a decision in which it has not been involved, when it considers that it has an interest of a legal nature which may be affected by the decision in the dispute between those States. Any third State seeking to intervene in the case must normally file its request for permission to do so before the closure of the written proceedings in the principal case. Fiji sought permission to intervene in the *Nuclear Tests* cases, as did Malta in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*. Italy requested permission to intervene in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Nicaragua filed an Application for permission to intervene in the case concerning the *Land, Island and Maritime Frontier Dispute*, and Australia, Samoa, the Solomon Islands, the Marshall Islands and the Federated States of Micronesia requested permission to intervene in the *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the* Nuclear Tests (New Zealand *v.* France) *Case*. The Philippines sought to intervene in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* and Equatorial Guinea filed a request for permission to intervene in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*. Honduras and El Salvador requested permission to intervene in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)* and Greece sought to intervene in the case concerning *Jurisdictional Immunities of the State (Germany v. Italy)*. Only Nicaragua, Equatorial Guinea and Greece were successful in their applications. When permission to intervene is granted, the intervening State, having received copies of the pleadings, may submit a written statement and participate in the oral proceedings. However, it does not by that fact alone become a party to the case, and cannot ask the Court to recognize its own rights. On the other hand, the Court has accepted that a State may intervene as a party, but only if it has shown that it has an interest of a legal nature in the dispute and only if there exists a valid basis of jurisdiction between all the States concerned (*Territorial and Maritime Dispute (Nicaragua v. Colombia), Application by Honduras for Permission to Intervene*). In such a case, which has yet to occur in practice, the decision of the Court will be binding on the intervening State, as it is on the other parties, in respect of any aspects of the case on which basis the intervention was allowed.

The Court's Statute (Art. 63) also stipulates that, where a case appears to involve the interpretation of a multilateral convention to which States other than the applicant and respondent States are parties, the Registrar is required to notify all such States forthwith, and any State so notified has the right to intervene in the proceedings. A declaration of intervention may be made even though the Registrar has not given such notification, and should normally be filed before the date fixed for the opening of the oral proceedings relating to the principal case. A number of States have presented declarations of intervention: Poland in the case concerning the *S.S. "Wimbledon"*, Cuba in the *Haya de la Torre* case, El Salvador in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, Samoa, the Solomon Islands, the Marshall Islands and the Federated States of Micronesia with respect to the *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the* Nuclear Tests (New Zealand *v.* France) *Case* and New Zealand in the case concerning *Whaling in the Antarctic (Australia v. Japan)*. The intervention was admitted in the first two cases and in the last case. The interpretation of the multilateral treaty that is given by the Court in its judgment will be binding upon any party that has intervened.

Finally, in accordance with an amendment to Article 43 of the Rules, which entered into force in 2005, the Court may direct the Registrar to notify any public international organization that is party to a convention the construction of which is at issue in a case. Any public international organization so notified may then submit written observations on the particular provisions of the convention the construction of which is in question and supplement these orally should the Court consider it necessary.

Examples of a special agreement, an application instituting proceedings, a memorial, preliminary objections, orders and a press release may be found on the Court's website (www.icj-cij.org). The official titles of cases as decided on by the ICJ are also published on the website. Written pleadings and oral arguments are published in the *I.C.J. Pleadings* series and are also found on the Court's website. The Court's decisions involving the application of its Statute and Rules are published each year in the *I.C.J. Yearbook*.

5. The Decision

There are two ways in which a case may be brought to a conclusion.

Discontinuance: at any stage of the proceedings the parties may inform the Court, jointly or separately, that they have agreed to withdraw the case. The Court, or its President if the Court is not sitting, then makes an Order for the removal of the case from the Court's List, which may mention or quote from any friendly settlement that the parties have reached (*_Delimitation of the Territorial Waters between the Island of Castellorizo and the Coasts of Anatolia_; *_Losinger_; *_Borchgrave_; _Certain Phosphate Lands in Nauru_; _Aerial Incident of 3 July 1988_). Discontinuance may also be unilateral: the applicant may at any time state that it is not going on with the proceedings. If the respondent has already carried out any procedural act, the discontinuance will only take effect if the respondent makes no objection. The Court or the President will then make an order for the removal of the case from the Court's List (see, for example: *_Denunciation of the Treaty of 2 November 1865 between China and Belgium_; *_Prince von Pless Administration_; *_Appeals from Certain Judgments of the Hungaro-Czechoslovak Mixed Arbitral Tribunal_; *_Polish Agrarian Reform and German Minority_; _Protection of French Nationals and Protected Persons in Egypt_; _Electricité de Beyrouth Company_; _Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient_; _Trial of Pakistani Prisoners of War_; _Border and Transborder Armed Actions (Nicaragua v. Costa Rica)_; _Border and Transborder Armed Actions (Nicaragua v. Honduras)_; _Passage through the Great Belt (Finland v. Denmark)_; _Maritime Delimitation between Guinea-Bissau and Senegal_; _Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie_; _Vienna Convention on Consular Relations (Paraguay v. United States of America)_; _Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Burundi) (Democratic Republic of the Congo v. Rwanda)_; _Status vis-à-vis the Host State of a Diplomatic Envoy to the United Nations_; _Certain Criminal Proceedings in France_; _Aerial Herbicide Spraying_). If the Court is not sitting the Order is made by the President. Two cases before the PCIJ ended in an express or tacit withdrawal as a consequence of the Second World War (*_Electricity Company of Sofia and Bulgaria_; *_Gerliczy_). Occasionally, the discontinuance may relate to only a part of the dispute which was not resolved in a previous phase of the case and remains outstanding. This occurred, for example, in the determination of the amount of compensation in the cases concerning _United States Diplomatic and Consular Staff in_

Fisheries and *Military and Paramilitary Activities in and against Nicaragua*). Finally, it should be noted that the term "discontinuance of proceedings" ("désistement d'instance") will be used where the applicant abandons — even if only temporarily — its pursuit of proceedings before the Court, without necessarily giving up its right to reinstitute the proceedings subsequently (see, for example, *Barcelona Traction, Light and Power Company, Limited*, where Belgium withdrew its proceedings in 1961 and filed a new application in 1962; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Rwanda)*, where proceedings were thus withdrawn in 2001, while in 2002 the Democratic Republic of the Congo instituted new proceedings against Rwanda with a similar subject-matter), as opposed to "discontinuance of right of action" ("désistement d'action"), where the applicant definitively renounces any right to seek to enforce before the Court its claims in respect of the issues which form the subject-matter of the proceedings (examples: *Vienna Convention on Consular Relations*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*).

— Judgment: the Court delivers a judgment that terminates the proceedings by upholding a preliminary point or objection, or by a decision on the merits. Conclusion of the proceedings by a judgment, which is the most usual solution, will now be considered in detail.

The Court's deliberations are secret

After the parties have completed the statement of their case, it remains for the Court to proceed to its judgment in circumstances consistent with the sound administration of international justice. Given the diverse composition of the Court, which must ensure the representation of the main forms of civilization and the principal legal systems of the world (Article 9 of the Statute), its deliberations are organized in such a way as to afford all judges an equal opportunity to participate in the decision. In order to achieve as large a consensus as possible between judges from different backgrounds, the process of gradually reaching a decision must be a joint one. Accordingly, the system of designating a given judge to act as Rapporteur, responsible for studying the case file and drawing up a draft decision, which was envisaged in the early days of the PCIJ, was quickly abandoned. A procedure favouring collective reflection gradually developed, before the Court considered it useful to codify this and make it public. To this end it adopted a resolution concerning the internal judicial practice of the Court, the first version of which was adopted in 1931, the second in 1936 (and continued in force in 1946), the third in 1968 and the fourth, the most recent, in 1976. It should however be noted that the Court has reserved the right to depart from the provisions of the resolution where necessary, and has indeed decided to do so in certain cases in order to expedite its deliberations. While the procedure adopted by the Court for its deliberations is into the public domain, the actual deliberations are secret. This principle, which is generally accepted in judicial systems and applied to all international courts, ensures that the Court's deliberations are conducted freely and effectively. Deliberations are held in a private room on the first floor of the Peace Palace. No one else is allowed to be present except the Registrar, Deputy-Registrar and a limited number of senior Registry officials to service the meeting. The minutes of these meetings, which are not intended to be published, simply note the dates, those present and the subject discussed, without any substantive comment.

Under the 1976 resolution, the deliberation normally has three phases, and lasts between three and nine months, depending on the complexity of the case in question and on how many other cases the Court may have to deliberate on at the same time:

> Once the public hearings are over, Members of the Court engage in a brief exchange of their preliminary views in a private meeting. The President draws up, in writing, a list of the issues that in his or her opinion require to be addressed in the case. Members of the Court are free to make comments on that list and suggest amendments.
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> Each judge then has several weeks in which to prepare a written note, giving his or her tentative views on the way in which he considers the case should be decided. The notes, which are drafted in English or French, are translated by the Registry and duly distributed to all judges composing the Court for the case in question. They enable Members of the Court to gain an initial impression of where the majority opinion may lie. The notes are strictly for the use of Members of the Court only.
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> After reading the notes, Members of the Court resume their deliberations, which may extend over several meetings. At these, the judges express their views orally in inverse order of seniority, i.e., beginning with the junior judge first and ending with the Vice-President and President. After each judge has spoken, questions may be put. The substance of the future majority decision thus becomes more clearly discernible, but normally no vote is yet taken on any specific point. On the conclusion of this discussion, a drafting committee, generally consisting of three Members of the Court (sometimes more), is then elected. Two of its Members are elected by secret ballot from among those judges whose personal views most closely reflect the opinion of the apparent majority, whilst the third is the President ex officio, unless it seems that his or her views are in the minority, in which case the Vice-President takes his role. Should both of them hold minority views, there is a further election for the third Member of the drafting committee.

[illegible]

- The drafting committee then prepares a preliminary draft judgment in English and French, with the assistance of the Registry. The preliminary draft — which, like the judges' notes is confidential — is circulated to Members of the Court. They then have a short time in which to make written suggestions for stylistic or substantive amendments relating to either language text, or to point out any discrepancies between the two languages. The drafting committee considers whether or not to accept these amendments and circulates another draft.
- The Court then gives this draft a first reading, during which it is discussed at several private meetings. Each paragraph is considered, and the most important are read aloud in both languages and, after discussion, is either left unchanged, amended or sent back to the drafting committee.
- An amended draft judgment is then distributed to Members of the Court and examined in the same way and given a second reading, which is shorter than the first, where it is adopted, with or without amendments.
- At the end of the second reading a final vote is taken on the operative part of the judgment, i.e., the response or responses of the Court to the parties' submissions. Any judge may request a separate vote on a specific point. On each point Members of the Court vote "yes" or "no" orally, in inverse order of seniority. Each decision is taken by an absolute majority of those judges present. No abstentions are allowed on any of the points on which a vote is taken. A judge who has not attended the entirety of the oral proceedings or the deliberations, but who has nevertheless not missed anything essential, may participate in the vote. If a judge is in a position to vote and wishes to do so, but is prevented from attending the meeting in person, measures may be taken to enable him to vote by other means. Should the votes be equally divided, which may happen where there is one judge *ad hoc*, or a regular Member of the Court is not sitting, the President or the Member of the Court acting as President casts the deciding vote (e.g., *"Lotus"*, *South West Africa*). The results of the vote are recorded in the minutes.

The judgment is delivered in public

Judgments are issued as bilingual documents, with the English and French versions on opposite pages. They vary greatly in length (from a minimum of ten to a maximum of 271 pages to date). In accordance with international legal practice, the Court endeavours when drafting to avoid employing legal terminology that would be too specific to any particular legal system. While refraining from going as far as using recitals (as it does in its Orders), the Court has followed the practice of most Civil Law countries in dividing its judgment into three main parts:

- an introduction (the *qualités*), which gives the names of the participating judges and the representatives of the parties, summarizes the course of the proceedings, and sets out the parties' submissions;

- the grounds for the Court's decision, where those matters of fact and law that have led the Court to its decision are set forth in detail and the arguments of the parties are given careful and balanced consideration;
- the operative part, which, after the words "For these reasons,"[5] contains the Court's actual decision on the requests made to it by the parties in their submissions.

The operative provisions are followed by a further paragraph embodying two decisions taken immediately after the final vote: which of the two language versions, English and French, on which the Court has worked is to be the authoritative text, and the date when the judgment is to be delivered. The authentic text will be printed on the left-hand pages. If the entire proceedings, whether by agreement between the parties or for some other reason, have been conducted in only one of the Court's two official languages, the version in that language will become the authentic version of the judgment; where this is not the case the Court decides the matter. In any event, both texts are considered official versions emanating from the Court (exceptions: *Lotus*, *Brazilian Loans*).

The judgment bears the official date of the day on which it is to be delivered, which is a short while after the final vote, so as to enable the Registry to notify the agents of the parties, to invite journalists and the public to attend the public reading, and to have a provisional printed copy of the judgment produced. During this brief interval the Court's decision is not communicated to anyone. The PCIJ refused a request in a special agreement to inform the parties unofficially of its decision between the end of its deliberations and the delivery of judgment (*Free Zones of Upper Savoy and the District of Gex*). The ICJ for its part has felt it necessary to point out that it would be incompatible with the sound administration of justice to make, circulate or publish any statements anticipating what its decision would be (see *Nuclear Tests*).

In contrast to the practice of international arbitral tribunals, the delivery of a judgment by the ICJ is given maximum publicity. It takes place at a public sitting, normally held in the Great Hall of Justice of the Peace Palace. Those judges who participated in the vote are present unless prevented from attending for important reasons; a quorum of nine judges must be present. The President reads the judgment, with the exception of the *qualités*, in one of the Court's two official languages. On occasion, because of the length of the judgment, the President does not read it in its entirety. In such cases, he indicates which passages have been omitted and gives a brief summary of them. When the President has concluded, the Registrar reads out the operative provisions in the other official language of the Court. At the close of the reading, the agents of the parties are each handed a copy of the provisional print-out signed by the President and Registrar and sealed with the Court's seal; these two copies, together with a third copy, also signed and sealed, that is retained in the Court's archives, constitute the official copies of the judgment. The text of the judgment is also distributed to journalists and placed on the Court's website. The Registry prepares a brief press release for the press and public, and a detailed summary of the decision. These two latter documents, which are not binding on the Court, are sent to the Department of Public Information of the United Nations Secretariat and other interested parties. The Secretary-General is informed of the decision by an official communication from the Registrar.

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[5] With few exceptions, the operative provisions of the judgments delivered up to [illegible] have begun with the word "Accordingly", and those of the judgment of 1992 in the case concerning the *Land, Island and Maritime Frontier Dispute* referred, in each of the eight paragraphs of the operative part, to the paragraphs containing the directly relevant grounds.

Generally within a few months, the judgment is printed and published in a volume of the *Reports of Judgments, Advisory Opinions and Orders*, which is sent by the Registry to the governments of those States that are entitled to appear before the Court, and also placed on sale[13]. Subsequently, in order that those who are particularly interested in the case may be fully informed as to the material on which the Court based its decision, the documents in the case are printed and published in the *Pleadings, Oral Arguments, Documents* series. These volumes contain, in the original language only, the parties' written pleadings and the verbatim records of the public hearings, together with such further documents, annexes and correspondence, as are considered essential in order to illustrate the Court's decision.

Separate and dissenting opinions

The 1978 Rules (see p. 18 above) stipulate that the operative provisions of each judgment shall indicate the number and names of the judges constituting the majority. Until 1978 judgments gave only the number voting for and against each point, without stating who had voted which way. It has always been recognized in the Statute that individual judges are entitled to append their own opinions and declarations if they so wish. Some judges have preferred never to do so. In only a very few cases, however, has the Court rendered a judgment to which no separate or dissenting opinions were attached (e.g., *Haya de la Torre*; *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case*; *Maritime Delimitation in the Black Sea*).

Judges' opinions may take various forms:

- A dissenting opinion states the reason why a judge disagrees, on one or more points, with the Court's decision (i.e., with the operative provisions and the reasoning of the judgment) and has in consequence voted against either the judgment as a whole or what that judge sees as vital aspects of the operative provisions.

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[13] The Registry publishes summaries, in all of the Organization's official languages, of the Court's judgments, advisory opinions and orders prepared in English and French by the Registry.

- A separate opinion is written by a judge who has voted in favour of the Court's decision as a whole, but on the basis of different or additional reasoning; there can thus be separate opinions even in those cases where the Court's decision is unanimous (e.g., *Minquiers and Ecrehos*; *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (Tunisia v. Libyan Arab Jamahiriya)*; *Border and Transborder Armed Actions (Nicaragua v. Honduras)*; *Land, Island and Maritime Frontier Dispute*; *Aerial Incident of 3 July 1988*; *LaGrand*; *Legality of Use of Force*).

- A declaration enables a judge to record his or her concurrence or dissent, and give a succinct explanation of the underlying reasoning.

Since an opinion may be a dissenting opinion in some respects and a concurring (and hence separate) opinion in others, it is left to its author to decide what it should be called. The matter is of some importance, particularly when the operative part of the judgment consists of several paragraphs on which separate votes have been taken. Two or more Members of the Court may join together to file a joint opinion. Those Members of the Court who wish to file opinions are given an opportunity to do so between the end of the first reading and the beginning of the second, so that the drafting committee can take account of them in drafting its final version of the judgment, which must be submitted to the Court for final adoption. The original texts of declarations and opinions are printed after the text of each judgment. They can represent an addition of several hundreds of pages (e.g., *South West Africa* cases, 351 pages or ten times the length of the judgment itself; *Military and Paramilitary Activities in and against Nicaragua*, 408 pages or almost three times the length of the judgment; *Legality of the Threat or Use of Nuclear Weapons*, 325 pages or eight times the length of the advisory opinion; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, 545 pages or almost three times the length of the judgment; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 680 pages or almost four times the length of the judgment). The declarations and separate or dissenting opinions appended to the Court's decisions are presented according to the seniority of their authors, irrespective of the title given to them. The authors of opinions and declarations sign their opinions in the original copies of the judgment. It is generally considered that opinions and declarations should be confined to the points addressed in the text of the decision as adopted by the majority, and should be restrained in tone. The desirability of employing at an international level a system which is unknown in the legal procedures of some countries has been disputed. It has been questioned whether this is more likely to strengthen or weaken the authority and cohesion of the Court, and the way in which the system operates has sometimes attracted criticism. The fact remains that many consider it an essential safeguard of freedom of expression and the sound administration of justice. As the Court itself has had occasion to stress:

> "an indissoluble relationship exists between [its] decisions and any separate opinions, whether concurring or dissenting, appended to them by individual judges. The statutory institution of the separate opinion . . . afford[s] an opportunity for judges to explain their votes. In cases as complex as those generally dealt with by the Court, with operative paragraphs sometimes divided into several interlinked issues upon each of which a vote is taken, the bare affirmative or negative vote of a judge may prompt erroneous conjecture which his statutory right of appending an opinion can enable him to forestall or dispel. . . . Not only do the appended opinions elaborate or challenge the decision, but the reasoning of the decision itself, reviewed as it finally is with knowledge of the opinions, cannot be fully appreciated in isolation from them." (General Assembly doc. A/41/591/Add.1 of 5 December 1986, Ann. II.)

A judgment is binding on the parties

So far as the parties to the case are concerned, a judgment of the Court is binding, final and without appeal. This principle applies to all the Court's judgments, whether delivered by a full Bench of the Court or by a Chamber, whether delivered by the ICJ when hearing a case brought directly to it or on appeal from

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Sometimes judges also append declarations or separate or dissenting opinions to Orders of the Court, in particular those indicating provisional measures, recording a discontinuance of the proceedings, relating to the constitution of a Chamber, deciding whether to grant an application for permission to intervene, and other procedural matters, such as the joinder of proceedings (e.g. *Fisheries Jurisdiction; Nuclear Tests; Delimitation of the Maritime Boundary in the Gulf of Maine Area; Military and Paramilitary Activities in and against Nicaragua; Land, Island and Maritime Frontier Dispute; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro); Fisheries Jurisdiction (Spain v. Canada); Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case; Vienna Convention on Consular Relations; LaGrand; Legality of Use of Force; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda); Arrest Warrant of 11 April 2000; Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda); Frontier Dispute (Benin/Niger); Certain Criminal Proceedings in France (Republic of the Congo v. France); Pulp Mills on the River Uruguay (Argentina v. Uruguay); Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America); Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation); Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal); Territorial and Maritime Dispute (Nicaragua v. Colombia); Whaling in the Antarctic (Australia v. Japan): Declaration of Intervention of New Zealand; Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)/Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*).

another tribunal (**Peter Pazmany University, *Pajzs, Csáky, Esterházy; Appeal relating to the Jurisdiction of the ICAO Council*), whether the judgment actually states how the dispute is to be resolved or merely states the principles applicable (*North Sea Continental Shelf*) and whether or not it makes any award of damages (**S.S. "Wimbledon", *Treaty of Neuilly, Corfu Channel, Ahmadou Sadio Diallo*). Both the PCIJ and the ICJ have always taken the view that it would be incompatible with the letter and spirit of the Statute and with judicial propriety to deliver a judgment the validity of which would be subject to the subsequent approval of the parties, or which would have no practical consequences so far as their legal rights and obligations were concerned (**Free Zones of Upper Savoy and the District of Gex, Northern Cameroons*).

By ratifying the Charter, each Member State of the United Nations undertakes to comply with any decision of the ICJ in cases to which it is a party. Other States entitled to appear before the Court undertake the same obligation either by acceding to the Statute or by lodging a declaration to this effect with the Registry (see above p. 34). Furthermore, in consenting to the Court's jurisdiction over their disputes, States accept that its decisions are binding and final, in accordance with the Statute of the Court. It is exceptional in practice for a decision to remain unimplemented.

A State — whether a Member of the United Nations or not — which contends that the other party has failed to perform the obligations incumbent upon it under a judgment rendered by the Court, may submit the matter to the Security Council, which is empowered to recommend or decide upon the measures to be taken to give effect to the judgment (Article 94 of the Charter).

Since a decision of the Court affects the legal rights and interests solely of the parties to the case and only in that particular case, it follows that the principle of *stare decisis* (the binding nature of precedents) as it exists in common law countries does not apply to the decisions of the ICJ. The Court may therefore decide to depart from a solution or line of reasoning adopted in a previous case, but will of course only do so on serious grounds, for example in light of subsequent developments in international law. Moreover, in support of its reasoning, the Court often cites its previous rulings, or those of its predecessor, thus maintaining a certain consistency in its decisions in the interests of legal security, although there is never any suggestion that it is bound in all circumstances to follow them. A judgment of the Court does not simply decide a particular dispute, but inevitably also contributes to the development of international law. Fully aware of this, the Court takes account of these two objectives in preparing and drafting its judgments.

The ultimate aim of the Court is to contribute to the maintenance of peace and international security. The mere submission of a dispute to the Court, or at least its legal aspects, already constitutes a step towards pacific settlement. The passage of time, and the confidentiality and protocol surrounding the proceedings, as well as the need for the parties to adopt the objective language of the law, are all factors that have a calming influence. Governments are entitled to hope that the Court's decision, whichever way it may go, will enable them to bring their dispute to an honourable conclusion, but the mere fact that the dispute has been submitted to the Court means that good arguments exist on both sides. Naturally each side is convinced of the justice of its case and hopes that the Court will enable it to achieve that justice.

A judgment is binding only as between the parties

A decision of the Court can have no binding force as between States other than the parties to the case, or with respect to any dispute other than the one that has been decided (Article 59 of the Statute). However, it may be that a judgment, while not binding on another State, may be capable of affecting its interests. For example, the Court's determination of a territorial regime has an "objective" character, which has certain legal effects vis-à-vis States other than those to whom the decision is addressed. Moreover, the interpretation by the Court of a multilateral convention cannot be completely ignored by signatory States other than the parties to the proceedings before the Court. It is because of these various effects that the Court's decisions may have on third States that the Statute makes provision for the latter to request the right to intervene in the proceedings (see above, pp. 66-67). The Court has, moreover, held that it must refuse to rule on the merits where its decision would in practice have affected the legal interests of another State not party to the proceedings (*Monetary Gold Removed from Rome in 1943*; *East Timor*).

Interpretation and revision of a judgment

Interpretation and revision of a judgment are proceedings formally distinct from the initial case. However, where the Court has had jurisdiction to deliver a judgment it will also, *ipso facto*, have jurisdiction to interpret or revise that judgment.

- The Court may, at the request of either party, interpret one of its judgments where there is a dispute between them as to the meaning or scope of what the Court has decided with binding force (Article 60 of the Statute). In some cases the Court has refused such a request (e.g., **Treaty of Neuilly*; *Asylum*; *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning* Avena and Other Mexican Nationals). In other cases it has acted on the request — at least in part (**Factory at Chorzów*; *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) (*Tunisia v. Libyan Arab Jamahiriya*); *Request for Interpretation of the Judgment of*

15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) *(Cambodia v. Thailand)*).

Should a matter come to light of which the Court was until then unaware, and which is of such a nature as to be a decisive factor, either party may request that the judgment be revised (e.g., *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia v. Libyan Arab Jamahiriya)*; *Application for Revision of the Judgment of 11 July 1996 in the Case concerning the* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections *(Yugoslavia v. Bosnia and Herzegovina)*; *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the* Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) *(El Salvador v. Honduras)*). This new fact must have been unknown to the party claiming revision, always provided that such ignorance was not due to negligence. The request for revision must be submitted within six months of the discovery of the new fact and within ten years of the delivery of the judgment (Article 61 of the Statute). To date, no such application for revision has ever been upheld.

6. Advisory Opinions

Since States alone have the capacity to appear before the Court, public international organizations cannot as such be parties to any contentious proceedings. It has been proposed that they be afforded this possibility, but nothing so far has come of this. If a question arises concerning the interpretation or implementation of their constitutions or of conventions adopted in pursuance thereof, it is for their constituent Member States to bring contentious proceedings in the ICJ. In such a case the organization concerned is informed of the proceedings by the Registrar and receives copies of the written pleadings (e.g., *Appeal Relating to the Jurisdiction of the ICAO Council*; *Border and Transborder Armed Actions*; *Aerial Incident of 3 July 1988*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*; *Legality of Use of Force*; *Armed Activities on the Territory of the Congo*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*; *Dispute regarding Navigational and Related Rights*; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea*; *Territorial and Maritime Dispute*; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination*). All that the organization can then do is to furnish the Court with relevant information. Public international organizations may also furnish information or present observations in other circumstances, either on their own initiative or at the request of the parties or of the Court itself. The constitutions of some organizations (e.g., FAO, UNESCO, WHO, ICAO, ILO) or agreements between them and the United Nations, stipulate that when they are requested to furnish information they are obliged to do so. The Rules of Court provide that time-limits for doing so may be imposed and that the parties to the case may comment on the information furnished. To date, only one international organization, the ICAO, has furnished the Court with such written observations in the case concerning the *Aerial Incident of 3 July 1988*.

Advisory opinions are given to public international organizations

However, there is a special procedure, the advisory procedure, available to public international organizations and to them alone. Certain organs and agencies, at present 21 in number, have the right to ask the Court for an advisory opinion on a legal question.

- Under Article 96 of the Charter of the United Nations, the General Assembly and Security Council have the power to request an advisory opinion on "any "legal question". Furthermore, the General Assembly may authorize any other organ of the Organization or specialized agency to ask the Court for an advisory opinion on "legal questions arising within the scope of their activities". During the League of Nations era the power to request an opinion extended more broadly to "any dispute or question" but was confined to the Assembly and the Council. In practice, only the Council availed itself of this power, whereas since 1947 it is above all the UN General Assembly that has made use of it, the Security Council having only once requested an advisory opinion.

— Four other United Nations organs have been authorized by General Assembly resolutions to request advisory opinions of the Court with respect to "legal questions arising within the scope of their activities" (namely, the Economic and Social Council, the Trusteeship Council, the Interim Committee of the General Assembly and, until its abolition in 1995, the Committee on Applications for Review of Administrative Tribunal Judgements). Two of those organs have availed themselves of the opportunity to do so (the Economic and Social Council and the Committee on Applications for Review of Administrative Tribunal Judgements).

— Furthermore, 16 specialized agencies and related organizations are authorized by the General Assembly, in pursuance of agreements governing their relationship with the United Nations, to ask the ICJ for advisory opinions. Up to the present, however, only four of these have availed themselves of this opportunity to ask the Court for an advisory opinion (UNESCO, IMO, WHO and IFAD).

The precise circumstances in which each organization may avail itself of the Court's advisory jurisdiction are specified either in its constitutive act, constitution or statute (Constitution of the ILO, 9 October 1946; Constitution of the FAO, 16 October 1945; Constitution of the United Nations Educational, Scientific and Cultural Organization, 16 November 1945; Constitution of the WHO, 22 July 1946; Convention on the Inter-Governmental Maritime Consultative Organization, 6 March 1948, entered into force on 17 March 1958 and amended with effect from 22 May 1982; Statute of the IAEA, 26 October 1956, etc.) or in specific instruments such as its headquarters agreement or the convention governing its privileges and immunities. Advisory opinions may be requested relating to the interpretation of these texts or of the Charter of the United Nations, and may concern disagreements between, for example:

— two or more organizations *inter se*;

— an organization and one or more of its staff members;

— an organization and one or more of its Member States;

— two or more States Members of the same organization *inter se*.

In general these texts do not provide for a request to the Court for an advisory opinion on a dispute between the UN and a specialized agency.

Organs and agencies entitled to ask the ICJ for an advisory opinion

[illegible]

*General Assembly
*Security Council
*Economic and Social Council
Trusteeship Council

[illegible]

Interim Committee of the General Assembly

[illegible]

International Labour Organization (ILO)
Food and Agriculture Organization of the United Nations (FAO)
*United Nations Educational, Scientific and Cultural Organization (UNESCO)
*World Health Organization (WHO)
International Bank for Reconstruction and Development (IBRD)
International Finance Corporation (IFC)
International Development Association (IDA)
International Monetary Fund (IMF)
International Civil Aviation Organization (ICAO)
International Telecommunication Union (ITU)
*International Fund for Agricultural Development (IFAD)
World Meteorological Organization (WMO)
*International Maritime Organization (IMO)
World Intellectual Property Organization (WIPO)
United Nations Industrial Development Organization (UNIDO)
International Atomic Energy Agency (IAEA)

Although in the final analysis any decision taken by an international entity emanates from its Member States, it is always through the intermediary of an organ of the entity, the task of which is to safeguard the collective interest of its Member States, that a request for an advisory opinion must be made. It has been proposed that States should be given the right to ask for advisory opinions, but this considerable extension of the Court's jurisdiction has not so far won acceptance.

Those organs and agencies that have asked for advisory opinions since 1946 are indicated by an asterisk.

Previously known as the Inter-Governmental Maritime Consultative Organization (IMCO).

It may be noted that the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, dated 21 March 1986 (not yet in force) takes account of this limitation, providing that, in the event of disputes concerning certain articles of that Convention arising between an international organization and a State party, the State may ask a competent organ or institution to request an advisory opinion from the Court.

neither have suggestions that the United Nations Secretary-General should be empowered to ask for advisory opinions.

Relatively limited use has been made of the system of advisory opinions. The ICJ has delivered proportionately fewer opinions than its predecessor: whereas the PCIJ delivered 27 advisory opinions in the space of 17 years, from 1922 to 1939, the ICJ has rendered only 27 opinions throughout its entire existence, from 1946 to 2019.

The procedure in advisory opinions is based on that in contentious proceedings

The Court's procedure in advisory proceedings, although having distinctive features resulting from the special nature and object of the Court's advisory function, as just described, is based on the provisions in the Statute and Rules relating to contentious proceedings.

Request for advisory opinion

Advisory proceedings begin with the filing of a written request for an advisory opinion. After suitable discussion, the organ or agency seeking the opinion will have embodied the question or questions to be submitted in a resolution or decision. An annex to the *Rules of Procedure* of the United Nations General Assembly recommends that the Sixth (Legal) Committee, or a joint committee containing some of its members, be consulted for advice. Similarly, when faced with the task of drawing up a request for an advisory opinion, the UNESCO Executive Board has been assisted by the Secretariat, the IMCO Assembly has turned to its Legal Committee, and the World Health Assembly has referred the matter to one of its main committees. Within an average of two weeks (although in the case concerning the *Constitution of the Maritime Safety Committee of the IMCO* it took two months, and three months in the case concerning the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*), the request is communicated to the Court under cover of a letter from the United Nations Secretary-General or from the Director or Secretary-General of the entity requesting the opinion. That communication constitutes the request for advisory opinion. The Registrar then immediately informs those States to which the Court is open. In urgent cases the Court will do all it can to speed up the proceedings.

Written and oral proceedings

In order to be as fully informed as possible in giving its opinion on the question submitted to it, the Court is empowered to conduct written and oral proceedings, certain aspects of which resemble the proceedings in contentious cases. In theory, the Court may do without such proceedings, but it has never dispensed with them entirely. A few days after the filing of the request, the

Court draws up a list of those States and international organizations likely to be able to furnish information on the question, and notifies them by means of a special direct communication that it is prepared to receive, within a time-limit fixed, written statements relating to the question, or to hear oral statements at a public sitting held for the purpose. These States are not in the same position as the parties to contentious proceedings, nor will any participation by them in advisory proceedings render the Court's Opinion binding upon them. In general, they are the Member States of the organization requesting the opinion, while sometimes the other States to which the Court is open in contentious proceedings are also included. Any State not consulted by the Court may request that it be included. It is rare, however, for the ICJ to allow international organizations other than the one that has asked for the opinion to participate in advisory proceedings (e.g., *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*). In the cases concerning the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* and the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court decided to accede to the requests to participate made by intergovernmental regional organizations because it considered that they were likely to furnish relevant information. With respect to non-governmental international organizations, in 2004 the Court adopted a Practice Direction (No. XII) which provides, *inter alia* that, where an NGO submits a written statement and/or document in advisory proceedings on its own initiative, such statement and/or document is to be treated as a publication readily available and may be referred to by the States and intergovernmental organizations participating in the proceedings.

The written proceedings are generally shorter than in contentious proceedings between States, and the rules governing them are quite flexible; in case of urgency they may even be omitted entirely. In general, the Court or its President makes an Order laying down a time-limit within which the States and organizations selected may file written statements if they so wish. This time-limit, which on average is two months, may be extended at the request of any State or organization concerned (e.g., *Legal Consequences for States of the Continued Presence of South Africa in Namibia*; *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*; *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for*

In the specific circumstances of the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court decided that Palestine might also file a written statement and participate in the oral proceedings. Similarly, in the case concerning *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, the Court decided that the authors of the unilateral declaration of independence could file a written contribution, followed by a second written contribution commenting those contributions on the written statements received from States and participate in the oral proceedings.

Agricultural Development). These statements have varied in both number and length. They must be in English or French. They may sometimes be quite lengthy (e.g., the written statement of South Africa in the case concerning *Legal Consequences for States of the Continued Presence of South Africa in Namibia* (172 pages) or those of Serbia and the United Kingdom in the case concerning *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, each exceeding 1,000 pages with annexes). The Court may allow authors of statements to submit written observations on other statements. Statements and observations are normally forwarded to all recipients of the direct official communication whereby they were invited to provide information on the question posed. The statements and observations are regarded as confidential, but are generally made available to the public on or after the opening of the oral proceedings.

All recipients of the direct official communication are usually invited to make an oral statement at public sittings on dates to be fixed by the Court, whether or not they have participated in the written phase. However, oral proceedings are not always held; for example, in the cases concerning the *Polish Postal Service in Danzig and the *Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa*, none of the invited States asked to make an oral statement. Where there are oral proceedings, in general the number of sittings is small, though in the *Legal Consequences for States of the Continued Presence of South Africa in Namibia* case there were 23 sittings, in the *Western Sahara* case 27, in the cases concerning the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* and the *Legality of the Threat or Use of Nuclear Weapons* there were 13 sittings, while in the case concerning *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* there were ten. The hearings are conducted in much the same manner as in contentious proceedings (see above pp. 54-58), with certain notable exceptions. In particular, the representatives of States before the ICJ are not known as agents and the President normally calls only once on each organization, and then on each State, either in alphabetical order or in the order laid down by the Court in response to suggestions by the participants.

The entity requesting the advisory opinion has a twofold role to play in the proceedings, one aspect being compulsory and the other optional:

- The Director or Secretary-General of the requesting entity is required to send the Court at the same time as the request, or as soon as possible thereafter, all documents likely to throw light upon the question. The documents thus forwarded to the Court are generally quite bulky, consisting as they do not only of documents of the organization itself relating to the origin of the request for an advisory opinion, but also of introductory or explanatory notes.

States and organizations(*) which have submitted written or oral statements in connection with advisory proceedings before the ICJ (1946 to 2013)

States

Albania
Algeria
Argentina
Australia
Austria
Azerbaijan
Bangladesh
Belarus
Belgium
Belize
Bolivia
Bosnia and Herzegovina
Brazil
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Chile
China
Colombia
Costa Rica
Croatia
Cuba
Cyprus
Czechoslovakia
Czech Republic
Denmark
Democratic People's Republic of Korea
Dominican Republic
Ecuador
Egypt
El Salvador
Estonia
Federal Republic of Germany
Federated States of Micronesia
Finland
France
German Democratic Republic

Greece
Guatemala
Guinea
Honduras
Hungary
India
Indonesia
Iraq
Ireland
Islamic Republic of Iran
Israel
Italy
Japan
Jordan
Kazakhstan
Kuwait
Latvia
Lebanon
Lesotho
Liberia
Libyan Arab Jamahiriya
Lithuania
Luxembourg
Madagascar
Malaysia
Maldives
Malta
Marshall Islands
Mauritania
Mexico
Morocco
Namibia
Nauru
Netherlands
New Zealand
Nicaragua
Nigeria
Norway
Pakistan

(*) Also Palestine and the authors of the declaration of independence in respect of Kosovo (see note 24 on p. 65 and pp. 269-270).

States

- Palau
- Panama
- Papua New Guinea
- Philippines
- Poland
- Portugal
- Qatar
- Republic of Moldova
- Romania
- Russian Federation
- Rwanda
- Samoa
- San Marino
- Saudi Arabia
- Senegal
- Serbia
- Sierra Leone
- Slovakia
- Slovenia
- Solomon Islands
- South Africa
- Spain
- Sri Lanka
- Sudan
- Sweden
- Switzerland
- Syrian Arab Republic
- Thailand
- Tunisia
- Turkey
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States of America
- Venezuela
- Vietnam
- Yemen
- Yugoslavia
- Zaire
- Zimbabwe

Organizations

- UNO
- ILO
- IFAD
- UNESCO
- OAS
- OAU
- WHO
- European Union
- League of Arab States
- Organization of Islamic Co-operation

— On occasion, the Director or Secretary-General of the requesting entity has been invited to supplement the documents referred to above with a statement. This was done, for example, by the Director-General of UNESCO (*Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco*), but not by the Secretary-General of IMCO (*Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization*). An oral statement was made on behalf of the Director-General of the WHO during the hearings on one of the requests submitted by that organization (*Legality of the Use by a State of Nuclear Weapons in Armed Conflict*), and in another request emanating from the same organization, the Director of the Legal Division of the WHO responded to questions put orally by Members of the Court; the WHO also submitted certain

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Presented by Ireland on behalf of the European Union.

additional documents requested by the Court (*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*). The Secretary-General of the United Nations has also sometimes submitted written and/or oral statements (e.g., *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*; *Legal Consequences for States of the Continued Presence of South Africa in Namibia*; *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*; *Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*). Furthermore, the Secretary-General has sometimes replied to written questions from Members of the Court (e.g., *Western Sahara*).

Following delivery of the advisory opinion, the written and oral statements of States and international organizations are published in full in their original language in the *Pleadings, Oral Arguments, Documents* series, normally also together with the documents lodged by the Director or Secretary-General of the entity that requested the opinion.

Composition of the Court

By the opening of the oral proceedings at the latest, decisions must be taken with respect to the composition of the Court (see above pp. 25-29).

- In several advisory proceedings, Members of the Court have refrained from sitting.

- In the cases concerning the *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, and the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, a State raised objections to the presence on the Bench of one or more Members of the Court, but these objections were dismissed by Orders made by the Court before the opening of the oral proceedings.

- The Rules of Court provide that if an "advisory opinion is requested upon a legal question actually pending between two or more States" (Art. 102, para. 3), the latter may be allowed to appoint judges *ad hoc*, the final decision on the matter resting with the Court. Whereas the PCIJ agreed to the appointment of judges *ad hoc* in six advisory cases between 1928 and 1932, only two requests of this kind have been received by the ICJ, namely in the *Legal Consequences for States of the Continued Presence of South Africa in Namibia* and *Western Sahara* cases. In the former case, after hearing observations on the question *in camera*, the Court made an Order declining to accept the appointment of a judge *ad hoc*. In the latter case, in which two States

— Mauritania and Morocco — asked to be allowed to appoint judges *ad hoc*, the Court heard observations on this question at public sittings and made an Order accepting one request and rejecting the other. The Court found that there appeared to be a legal dispute between Morocco and Spain relating to the territory of Western Sahara, so that the advisory opinion requested appeared to bear "upon a legal question actually pending between two or more States", and thus to warrant the appointment of a judge *ad hoc* by Morocco. On the other hand, there did not appear to be any legal dispute between Mauritania and Spain, so that the appointment of a judge *ad hoc* by Mauritania was not justified. At that time the membership of the Court included a judge of Spanish nationality.

- The 1978 Rules of Court (see p. 18 above) make it plain that it is possible to appoint assessors in advisory proceedings.
- No specific provision is made for recourse to a chamber of the Court in respect of advisory proceedings.

Delivery of the advisory opinion

Advisory proceedings are concluded by the delivery of the advisory opinion. Advisory opinions are drawn up after the same kind of deliberations as precede judgments, and are divided in the same way into a summary of the proceedings ("qualités"), the Court's reasoning and the operative provisions. On average they are slightly shorter. Declarations and separate or dissenting opinions may be appended to them. Advisory opinions are delivered in a manner similar to judgments (see above pp. 72-76). A signed and sealed copy of each opinion is kept in the Court's archives and a second is despatched to the Secretary-General of the United Nations; if the request for an advisory opinion comes from another entity, a third signed and sealed copy is sent to its Director or Secretary-General. The opinion is printed in the two official languages of the Court in the *Reports of Judgments, Advisory Opinions and Orders* series and copies are sent *inter alia* to those States to which the Court is open.

In the exercise of its advisory function, the ICJ has to remain faithful to the requirements of its judicial character and cannot depart from the essential rules that govern its activity as a court. It thus always has to begin by considering whether it has jurisdiction to give the requested opinion (Has it been seised by an authorized organ or agency? Is there a legal question and, if so, does that legal question arise within the scope of the organ or agency's activity?). In only one case, that of the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, did the Court decide that it lacked jurisdiction to answer the question submitted by the WHO.

Once it has established that it has jurisdiction, the Court must consider whether, in its view, there is any reason why it should not exercise such jurisdiction.

Although the ICJ has stated that "[a] reply to a request for an opinion should not, in principle, be refused", it may decide not to respond for "compelling reasons". Thus, the Court has considered, *inter alia*, either *proprio motu* or at a State's request, whether certain features of the previous treatment of the subject-matter rendered it undesirable for the Court to pronounce upon it, whether the question really called for a reply, whether the request concerned a contentious matter and a State involved in that matter had not consented to the exercise of the Court's jurisdiction, whether the organ requesting the advisory opinion, by its request, was interfering in the activities of another United Nations organ, whether the request concerned matters essentially within the domestic jurisdiction of a State, whether the request was being used primarily to further the interests of one State, whether the Court should decline to render an advisory opinion on the ground that that opinion could have no real legal effect, whether the advisory opinion could have a detrimental effect on international peace and security, and whether the Court lacked the factual evidence necessary to render the requested advisory opinion. No separate phase is devoted to such issues, but they are usually dealt with at the beginning of the reasoning of each advisory opinion. Despite the many possible reasons considered by the Court for declining a request for an advisory opinion, it has never done so. Its predecessor, the PCIJ, only once, in the "*Status of Eastern Carelia*" case, declined to give an advisory opinion: the question put to it at that time directly concerned a controversy between two States, one of which, not a member of the League and not a party to the Statute of the Court, objected to the proceedings and refused to take part; hence, to answer the question would have been tantamount to deciding the dispute without the consent of one of the States involved.

The requesting entity may itself withdraw its request before any advisory opinion is delivered, but here again there has only been one instance, and that in the time of the PCIJ ("*Expulsion of the Ecumenical Patriarch*").

The special case of advisory opinions on applications for the review of judgments of administrative tribunals

The task of administrative tribunals is to decide disputes between international organizations and members of their staff with respect to the latter's contracts of employment and conditions of appointment and employment. The Administrative Tribunal of the ILO has jurisdiction over applications brought by staff members of 58 organizations, including 11 specialized agencies and four related organizations. Its statute provides that, in certain cases where the validity of a judgment is contested, an advisory opinion may be requested from the ICJ, and will then be binding. This was also the case for decisions of the United Nations Administrative Tribunal, until, by a resolution adopted on 11 December 1995, the General Assembly decided to delete, with effect from 1 January 1996, Article 11 of the Tribunal's statute, which provided for the review procedure. The United Nations

Administrative Tribunal was replaced by the United Nations Dispute Tribunal and the United Nations Appeals Tribunal in July 2009[7].

A request for an advisory opinion on the validity of a judgment of the ILO Administrative Tribunal may emanate either from the Governing Body of the ILO or from the Executive Board of the organization wishing to contest the judgment. The advisory procedure before the Court entails the submission of written statements, as in other cases, but has certain special features, which derive from the need to ensure that the proceedings are fair and just, and that the interests of the staff member affected by the judgment are properly respected. Thus, since the staff member concerned has no standing to appear in person before the Court, he or she is allowed to prepare written observations and submit them to the Court through the chief administrative officer of the organization concerned. The Court has not so far held any oral proceedings in such cases.

The Court has given five advisory opinions under this procedure: once on the application of the Executive Board of UNESCO (*Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco*), three times on the application of the Committee on Applications for Review of Judgements of the Administrative Tribunal of the United Nations (*Application for Review of Judgement No. 158 of the Administrative Tribunal of the United Nations; Application for Review of Judgement No. 273 of the Administrative Tribunal of the United Nations; Application for Review of Judgement No. 333 of the Administrative Tribunal of the United Nations*) and once on the application of the International Fund for Agricultural Development (IFAD), a specialized agency of the United Nations, in respect of a judgment rendered by the Administrative Tribunal of the ILO (*Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*).

Characteristics of advisory opinions

It is of the essence of the Court's advisory opinions that they are advisory, i.e., unlike the Court's judgments, by their nature they have no binding effect. The requesting international organ or agency remains free to give effect to the opinion by any means open to it, or not to do so. In practice, however, parties to a specific instrument may agree that, as between themselves, an opinion shall have binding force, for example:

— in the case of advisory opinions on the validity of a judgment of the Administrative Tribunal of the ILO, as discussed above;

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[7] Under the terms of its statute, the United Nations Dispute Tribunal has jurisdiction over applications brought by "[a]ny staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes". The United Nations Appeals Tribunal has appellate jurisdiction over the decisions of the Dispute Tribunal.

in the case of opinions relating to disputes between an organization and one of its Member States regarding conventions on the privileges and immunities of the United Nations, its specialized agencies and the IAEA (see *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*); and

in the case of opinions relating to disputes concerning the interpretation or application of the Headquarters Agreement of 1947 between the United Nations and the United States.

The Court's advisory function is thus different from its function in contentious cases, and is also to be distinguished from the role played by the supreme court of certain countries as an interpreter of those countries' constitutions. The fact remains that the authority and prestige of the Court also attach to its advisory opinions, and that where the organ or agency concerned endorses that opinion, the latter, as it were, receives the sanction of international law. Moreover, if the Court has ruled on a legal question in an advisory opinion, it becomes more difficult to justify any argument to the contrary.

Chapter 8 contains a brief summary of the requests for advisory opinions that have been brought to the Court.

For a list of the advisory opinions rendered by the Court, see below, Annexes, pp. 303-304. The names of the organs and agencies authorized to request advisory opinions, a list of the instruments by virtue of which such requests may be submitted, the official titles of advisory opinions and a summary of such opinions are published each year in the *I.C.J. Yearbook*. Written and oral statements and observations are published in the *I.C.J. Pleadings* series; they are also published on the Court's website.

7. International Law

The Court is the organ of international law

The Court, principal judicial organ of the United Nations, has described itself as "the organ of international law". It dispenses justice within the limits that have been assigned to it by its Statute. There is today no other judicial organ in the world which has the same capacity to examine legal questions concerning the international community as a whole, and which offers States so wide a range of opportunities for promoting the rule of law. It is thus the only international court with both general and universal jurisdiction.

The disputes that have come before the Court have covered the most varied aspects of public and private law, have concerned all parts of the globe and have necessitated an examination of multiple legal systems and of wide-ranging State practice. The Court has also been called upon to address a number of questions relating to the law of international organizations. Irrespective of the nature of the issues brought before it, the Court has contributed to their resolution, and thus to the maintenance of peace, and to the development of friendly relations between States.

The Court applies international law

Article 38, paragraph 1, of the Statute of the Court declares that the Court's "function is to decide in accordance with international law such disputes as are submitted to it". In every case, after determining which rules of international law are applicable, it is the Court's duty to give its decision based on those rules.

Article 38, paragraph 1, goes on to provide that the international law to be applied by the Court is to be derived from the following sources:

"*(a)* international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;

(b) international custom, as evidence of a general practice accepted as law;

(c) the general principles of law recognized by civilized nations;

(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law".

The above is not an exhaustive statement of the foundations on which the Court can construct its decision. Some are listed, but not all. For instance, the paragraph does not mention unilateral acts of States, nor does it make reference to the decisions and resolutions of international organs, which very often contribute to the development of international law and may also be sources of rights and obligations.

Whether the Court is deciding a case of a contentious nature or is engaged in advisory proceedings, it applies the same sources of international law, and its decisions hold the same high level of authority, since, in both instances, it is "laying down" the law, even though the consequences of a particular decision may be different. It is only with the consent of the parties that the Court is authorized to move away from the sources listed in Article 38, paragraph 1, of the Statute, and rule according to what is reasonable and fair *(ex aequo et bono)* (see below, p. 98).

Treaties and conventions

The expression "international conventions" in Article 38, paragraph 1, is a broad one, covering not only bilateral and multilateral treaties and conventions formally so called, but also all other international understandings and agreements, even of an informal nature, provided that they establish rules recognized and accepted by the States parties to the dispute. The ICJ has emphasized that manifest acceptance or recognition by a State of a convention is necessary before the convention can be applied to that State. It often happens, however, that the language of a treaty or international agreement which is relied on before the ICJ as containing rules recognized by the States parties to the dispute is not so plain and precise as to make it clear that such treaty or agreement is applicable to the circumstances of the case in question. As the decisions of the Court show, it will then be for the Court to interpret the instrument and to determine its scope and effect, with a view to applying it. In practice, it falls to the Court to interpret a treaty or agreement in at least three cases out of four. In doing so, it seeks in the first place to determine the ordinary meaning of the words in their context, in light of the object and purpose of the instrument in question, without, however, sticking too closely to the particular rules applicable under the procedural law of any legal system. In that regard, it frequently refers to Article 31 of the 1969 Vienna Convention on the Law of Treaties, which it has recognized as having customary scope. In its Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, the Court stated that "an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation".

Custom

The Court's practice shows that a State which relies on an alleged international custom practised by States must, generally speaking, demonstrate to the Court's satisfaction that this custom has become so established as to be legally binding on the other party.

In the *North Sea Continental Shelf* cases the ICJ stated, with respect to customary international law:

> "Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it."

Similarly, in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, it recalled that "the material of customary international law is to be looked for primarily in the actual practice and *opinio juris* of States".

In the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the Court found that while it could not deal with complaints based on certain multilateral treaties owing to a reservation accompanying the declaration recognizing the compulsory jurisdiction of the Court, that reservation did not prevent it from applying the corresponding principles of customary international law. It explained that the fact that these principles

> "have been codified or embodied in multilateral conventions does not mean they cease to exist and to apply as principles of customary law, even as regards countries that are parties to such conventions".

Furthermore, such principles

> "continue to be binding as part of customary international law, despite the operation of provisions of conventional law in which they have been incorporated".

Judicial decisions

Judicial decisions and the teachings of publicists do not have the same status as other sources of law. They merely constitute a "subsidiary means for the determination of rules of law".

Judicial decisions are subject to the provisions of Article 59 of the Statute, which stipulates that a decision of the Court has no binding force except between the parties and in respect of that particular case (see above pp. 76-78). Nevertheless, both the ICJ and the PCIJ have made frequent reference to their own jurisprudence in the reasoning of their decisions. Moreover, the ICJ often cites its predecessor. The Court also sometimes cites decisions of other international courts and tribunals. In the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia* *and Montenegro)*, the Court accepted as "highly persuasive" relevant findings of fact made by the International Criminal Tribunal for the former Yugoslavia (ICTY) at trial, and found that any evaluation by the Tribunal as to the existence of the required criminal intent was "also entitled to due weight". It cited a number of decisions of the ICTY in its Judgment. The Court has also referred on a number of occasions to decisions of the International Tribunal for the Law of the Sea (e.g., *Territorial and Maritime Dispute (Nicaragua* v. *Colombia))*, as well as to decisions of various arbitral tribunals (see, for example, *Maritime Delimitation in the Area between Greenland and Jan Mayen; Gabčíkovo-Nagymaros Project; Kasikili/Sedudu Island; Maritime Delimitation and Territorial Questions between Qatar and Bahrain; Dispute regarding Navigational and Related Rights; Maritime Delimitation in the Black Sea; Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea*). The Court also takes account of relevant decisions of regional courts and tribunals, such as the European Court of Human Rights and the Inter-American Court of Human Rights, and of the interpretation given by certain independent organs set up to monitor the implementation of treaties, such as the Human Rights Committee and the African Commission on Human and Peoples' Rights (see, for example, *Ahmadou Sadio Diallo; Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*, as well as the advisory opinions in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* and *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*).

The decisions of domestic courts can also be relevant in establishing widespread State practice in a particular area. Thus, in the case concerning *Jurisdictional Immunities of the State*, the Court examined the domestic jurisprudence of various States in order to establish State practice concerning the immunity of the State in respect of the acts of its armed forces.

Ex aequo et bono

Paragraph 2 of Article 38 of the Statute provides that paragraph 1 of that Article "shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto". Although this provision has never been applied, it calls for comment. Its effect is to allow the Court, in the specified circumstances, to settle a dispute without strict regard for the existing rules of international law, but according to what is fair and just. Absent the consent of the Parties to the case, the Court cannot follow this course, but must apply the law, in accordance with the provisions of paragraph 1 of Article 38. The decision of a case *ex aequo et bono* must be distinguished from cases where the Court applies the general principles of law recognized by States, or the equitable principles of international law, or interprets existing law in an equitable manner (equity *infra legem*). In such cases, the Court is bound to keep within the limits of the existing law, whereas in the case of an exercise of its *ex aequo et bono* power with the consent of the parties, the Court is not required to have strict regard to existing rules of law, and may even disregard them altogether. The distinction has occasionally been mentioned by the Court in its decisions (e.g., *North Sea Continental Shelf; Continental Shelf (Libyan Arab Jamahiriya/Malta); Frontier Dispute (Burkina Faso/Republic of Mali))*. Nevertheless, the exercise of the *ex aequo et bono* power with consent is subject to certain limits. The Court remains under a duty to act solely in a judicial capacity, and must be careful not to overstep the norms of justice, or other accepted standards of equity and reasonableness prevailing in the international community.

The Court contributes to the development of the international law which it applies

In fulfilling its task of resolving legal disputes among States and assisting international organizations to function effectively in their various fields of activity, the ICJ helps to affirm and strengthen the role of international law in international relations. It also contributes to the development of that law.

The confidence placed in the Court by States at any given historical period is undoubtedly bound up with the nature of the international law which it is its task to apply. However, that law is continually evolving, and this evolution has taken on a new dimension in recent decades. Moreover, alongside the development of the rules of international law and their adaptation to present-day circumstances, the actual field of application of this law is constantly being extended by States in line with the increasing needs of the international community. The Court has always been aware of the importance of the evolving nature of the international law which it interprets and applies. Thus, as early as 1949, the Court recognized that the influence exercised by the Charter of the United Nations represented a "new situation"; in its Advisory Opinion on *Reparation for Injuries Suffered in the Service of the United Nations*, it commented:

> "The Court is here faced with a new situation. The questions to which it gives rise can only be solved by realizing that the situation is dominated by the provisions of the Charter considered in the light of the principles of international law."

Since then, the Court has rendered many decisions which expressly recognize the evolution of international law and the importance of this evolution in the determination of the law applicable to the case in question. By interpreting the international law in force and applying it to specific cases, the Court's decisions clarify both the substance of that law and the particular authority and legitimacy conferred upon it by the Charter of the United Nations. In so doing, the Court often presages developments in international law by States.

Indeed the Court's decisions are in themselves legal acts and are known both to States and to the international agencies entrusted with the continuing task of codification and progressive development of international law, in particular under the auspices of the United Nations. This task owes an immense debt to the Court's jurisprudence. The Court's role is effectively institutionalized in the Statute of the United Nations International Law Commission, which provides for the Commission to submit its draft articles to the Assembly together with a commentary containing an adequate presentation of precedents and other relevant data, including "judicial decisions". As can be seen from the Commission's drafts, decisions of the ICJ take pride of place in its presentation of relevant judicial decisions.

The cases marking the Court's particular contribution to the development of international law cover the widest possible spectrum, ranging from the most traditional aspects of international law to the most novel.

In regard to the traditional aspects of international law, the ICJ has contributed not only to strengthening the various basic rules and principles, but also to the development of certain of its principal branches.

The contributions made by the Court's jurisprudence with regard to the ***prohibition on the use of force*** and to ***self-defence*** are particularly significant. In its very first contentious case, the Court affirmed that a policy of force "such as has, in the past, given rise to most serious abuses . . . cannot, whatever be the present defects in international organization, find a place in international law" ***(Corfu Channel)***. In its 1986 Judgment in the case concerning ***Military and Paramilitary Activities in and against Nicaragua***, the Court had the opportunity to examine in detail the international rules on the subject, confirming that they were customary in nature and explaining the conditions for the exercise of self-defence. It confirmed those rules ten years later in the context of its Advisory Opinion on the ***Legality of the Threat or Use of Nuclear Weapons***. This subject remains at the heart of the Court's concerns: the Court has, for example, had occasion to examine questions of self-defence in the ***Oil Platforms*** case, as well as in its Advisory Opinion on ***Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory***. In the case concerning ***Armed Activities on the Territory of the Congo (Democratic Republic of the Congo*** v. ***Uganda)***, the Court emphasized that the prohibition of the use of force was a "cornerstone of the UN Charter", and recognized the customary character of the relevant provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV), adopted by the General Assembly on 24 October 1970), which provide that

> "[e]very State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or

> acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force",

and that

> "no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State".

Several judgments of the ICJ have also had an impact on the development of the *law of the sea* and on the work of the conferences convened by the United Nations to deal with this subject. Thus since 1951, when the International Law Commission undertook the codification of this subject, the Court has identified a number of basic criteria governing the delimitation of the territorial sea: since this is closely dependent on the land domain, the baseline from which its breadth is measured must not depart to any appreciable degree from the general direction of the coast; certain waters are intimately linked with the land features that separate or surround them; there may be occasion to take account of the specific economic interests of a region where their reality and significance is clearly attested by long-standing usage. Moreover, at a time when the Third United Nations Conference on the Law of the Sea had barely begun its work, the Court made the following statement regarding the determination of the boundaries of the fisheries jurisdiction of States:

> "It is one of the advances in maritime international law, resulting from the intensification of fishing, that the former laissez-faire treatment of the living resources of the sea in the high seas has been replaced by a recognition of a duty to have due regard to the rights of other States and the needs of conservation for the benefit of all." *(Fisheries Jurisdiction.)*

The Court has also taken an active part in the development of the principles and rules of international law which apply to maritime expanses under State jurisdiction. Before the conclusion of the Montego Bay Convention of 10 December 1982, for example, it had already affirmed that the concept of the "exclusive economic zone" had become part of international law *(Continental Shelf (Tunisia/Libyan Arab Jamahiriya))*. In defining maritime boundaries between States with adjacent or opposite coasts, the Court has applied new principles in regard both to the definition and delimitation of the continental shelf (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya); Continental Shelf (Libyan Arab Jamahiriya/Malta)*) and to the delimitation of the continental shelf and exclusive fisheries zones *(Delimitation of the Maritime Boundary in the Gulf of Maine Area; Maritime Delimitation in the Area between Greenland and Jan Mayen)*.

In a number of more recent cases (e.g., *Maritime Delimitation and Territorial Questions between Qatar and Bahrain; Land and Maritime Boundary between*

Cameroon and Nigeria) the Court has continued to apply the rules and methods of maritime delimitation developed by it, thereby helping to clarify them. While the contemporary law of the sea distinguishes between the delimitation of territorial seas on the one hand, and the delimitation of the continental shelf and fishery zones or exclusive economic zones on the other, the Court's jurisprudence shows that comparable rules apply in all cases. In practice, the Court is increasingly called upon by States to determine a single maritime boundary delimiting their respective territorial seas, continental shelves and exclusive economic zones. In 2009 and in 2012, in its judgments in the cases concerning *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)* and the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, the Court summarized the present state of the law governing maritime delimitation, stating that it should follow a three-stage approach: first selecting base-points and establishing a provisional equidistance line, then, secondly, examining any factors which might call for an adjustment of that line and adjusting it accordingly so as to achieve an equitable result and, finally, verifying that the line as adjusted does not give rise to an inequitable result by comparing factors such as the ratio between maritime areas and respective coastal lengths.

In regard more generally to *territorial sovereignty*, the Court has enshrined the principle of the intangibility of frontiers inherited from the decolonization, as well as that of *uti possidetis juris*, whereby the legal title enjoys priority over effective possession as the basis of sovereignty, possession being decisive only in the absence of such title (*Frontier Dispute (Burkina Faso/Mali)*; *Land and Maritime Boundary between Cameroon and Nigeria*; *Sovereignty over Pulau Ligitan and Pulau Sipadan*; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*).

In the area of *decolonization*, the Court has had occasion to stress the primordial role of the principle of self-determination, viewed as an ongoing process (see, for example, the advisory proceedings in the case concerning the *Legal Consequences for States of the Continued Presence of South Africa in Namibia* and in the *Western Sahara* case). In the case concerning *East Timor (Portugal* v. *Australia)*, the Court recognized that "the right of peoples to self-determination, as it has evolved from the Charter and from United Nations practice, has an *erga omnes* character" and that the corresponding principle is "one of the essential principles of contemporary international law" (see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*).

The *law of treaties* is one of the many other fields in which the Court's continuing awareness of developing legal trends has found expression. As early as 1951, after referring to the traditional views concerning the validity of reservations to multilateral treaties, the Court noted the emergence of new trends constituting a "manifestation of a new need for flexibility in the operation of multilateral conventions" (*Reservations to the Convention on the Prevention and Punishment of* *the Crime of Genocide).* The ICJ has also rejected rigid approaches to the interpretation of treaties. As mentioned above (p. 96), it has emphasized that "an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation". Indeed, well before the entry into force of the Vienna Convention on the Law of Treaties, the Court unhesitatingly described it as an instrument which, in many respects, represented a codification of customary law (for example, in the *Fisheries Jurisdiction* cases *(jurisdiction phase)* with respect to Article 62 of the Vienna Convention concerning a fundamental change of circumstances). More recently, in the *Gabčíkovo-Nagymaros Project*, the Court reaffirmed that the rules codified in Articles 60 to 62 of the Vienna Convention are customary in nature.

On many occasions the ICJ, like its predecessor the PCIJ, has contributed to the definition of the principles governing *State responsibility* by establishing the conditions and consequences of the engagement of State responsibility. The Court has frequently been called upon to determine the imputability of a wrongful act to a State: *United States Diplomatic and Consular Staff in Tehran; Military and Paramilitary Activities in and against Nicaragua; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro).* The Court has also been called upon to rule on various other issues concerning State responsibility, including: a state of necessity as a ground for precluding the wrongfulness of an act *(Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory; Gabčíkovo-Nagymaros Project)* and the conditions governing the taking of countermeasures *(Gabčíkovo-Nagymaros Project)*, as well as reparation for injury and assurances and guarantees of non-repetition *(Gabčíkovo-Nagymaros Project; LaGrand; Arrest Warrant of 11 April 2000; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda); Pulp Mills on the River Uruguay (Argentina* v. *Uruguay); Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)).* Moreover, in its Judgment in the *Gabčíkovo-Nagymaros Project* the Court provided some elucidation of the relationship between the law of treaties and the law of State responsibility:

> "[T]hose two branches of international law obviously have a scope that is distinct. A determination of whether a convention is or is not in force, and whether it has or has not been properly suspended or denounced, is to be made pursuant to the law of treaties. On the other hand, an evaluation of the extent to which the suspension or denunciation of a convention, seen as incompatible with the law of treaties, involves the responsibility of the State which proceeded to it, is to be made under the law of State responsibility."

More recently, in 2007, the Court for the first time considered the question of State responsibility in respect of genocide *(Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro))*. The Court clearly stated that "if an organ of the State, or a person or group whose acts are legally attributable to the State, commits any of the acts proscribed by Article III of the [Genocide] Convention, the international responsibility of that State is incurred". It found in the case in question that genocide had been committed in Srebrenica in July 1995, but that proof had not been shown to the Court that legal responsibility was directly attributable to the Respondent. However, it did conclude that the State in question had violated its obligations under the Convention to prevent the genocide at Srebrenica and to transfer to the International Criminal Tribunal for the former Yugoslavia for trial any individuals finding themselves in its territory and indicted for genocide by that Tribunal in relation to the Srebrenica massacres.

The Court has also made a notable contribution in the development of other classic areas of international law, such as *asylum*, where it held that asylum cannot be an obstacle to proceedings instituted by legal authorities in accordance with the law *(Asylum (Colombia/Peru))*, and diplomatic and consular relations. In the case concerning *United States Diplomatic and Consular Staff in Tehran* the Court emphasized the fundamental importance in the conduct of international relations of the inviolability of diplomatic staff and embassy premises. The Court has also played a significant role in the development of the right of jurisdictional immunity of States and their representatives: in the case concerning the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium)*, it clearly recognized the right of immunity from suit, both civil and criminal, enjoyed in other States by diplomatic and consular staff, as well as by certain holders of high-ranking office, such as the Head of State or Government and the Minister for Foreign Affairs. In the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)*, the Court expressly recognized that such immunity extended to the States themselves.

In the field of *consular relations*, the Court has had to interpret and apply the relevant provisions of Article 36 of the Vienna Convention on Consular Relations, which requires States parties to notify the consular authorities of another State party without delay upon the arrest or detention of any of the latter's nationals, and must inform those individuals without delay of their right to consular assistance *(LaGrand; Avena and other Mexican Nationals; Ahmadou Sadio Diallo)*. In the case concerning *Avena and other Mexican Nationals (Mexico* v. *United States of America)*, the Court asked the United States to review and reconsider the convictions and sentences of 51 individuals because their consular rights had not been respected.

As regards the Court's contribution to contemporary developments in international law, in its 1970 Judgment in the *Barcelona Traction* case *(Second Phase)* it recognized the existence of obligations incumbent upon States towards the international community as a whole ("obligations *erga omnes*") which it described as follows:

> "Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination."

More recently, the Court has recognized the peremptory *(jus cogens)* character of certain norms of fundamental importance for the international community as a whole and from which derogation is never permitted, such as the prohibition of genocide *(Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda))* and the prohibition of torture *(Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal))*.

On numerous occasions, the ICJ has also been called upon to decide questions relating to basic human rights, both in times of peace and during an armed conflict. Thus in its 1971 Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, the Court had occasion to emphasize that "to establish . . . and to enforce distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights" is a flagrant violation of the purposes and principles of the United Nations Charter. More recently, in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court recalled the importance of respecting the rules of international humanitarian law. In particular, it emphasized that the rules in question incorporate obligations which are essentially of an *erga omnes* character "[g]iven the character and importance of the rights and obligations involved [deriving from the four Geneva Conventions]", and that all States are under an obligation not to recognize the illegal situation resulting from their violation. The Court had previously recognized that a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and "elementary considerations of humanity" *(Corfu Channel)* that they are to be observed by all States because they constitute "intransgressible principles of international customary law" *(Legality of the Threat or Use of Nuclear Weapons)*.

In the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, the Court found that, as a result of killings, torture and other forms of inhumane treatment committed by Ugandan armed forces against the Congolese civilian population, the Republic of Uganda had violated its obligations under international human rights law and international humanitarian law.

Over the last twenty years the Court has addressed a growing number of questions of *environmental law*. For example, while noting that existing norms relating to the safeguarding and protection of the environment did not specifically prohibit the use of nuclear weapons, the Court nonetheless emphasized that international law indicates important environmental factors that are relevant to the implementation of the rules of law governing armed conflicts or to an assessment of the lawfulness of self-defence. In this regard, it stated that

> "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment." ***(Legality of the Threat or Use of Nuclear Weapons.)***

Barely a year later, citing this passage, the Court reaffirmed "the great significance that it attaches to respect for the environment, not only for States but also for the whole of mankind", and made the following observation:

> "[I]n the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage.
>
> Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind — for present and future generations — of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development." ***(Gabčíkovo-Nagymaros Project.)***

In its 2010 Judgment in the case concerning ***Pulp Mills on the River Uruguay***, the Court stated that the practice of undertaking an environmental impact assessment where there is a risk that a proposed industrial activity may have a significant adverse effect in a transboundary context "has gained so much acceptance among States that it may now be considered a requirement under general international law".

Summaries of decisions of the Court are published each year in the *I.C.J. Yearbook*, which is available on the Court's website (www.icj-cij.org), where their official modes of citation can also be found.

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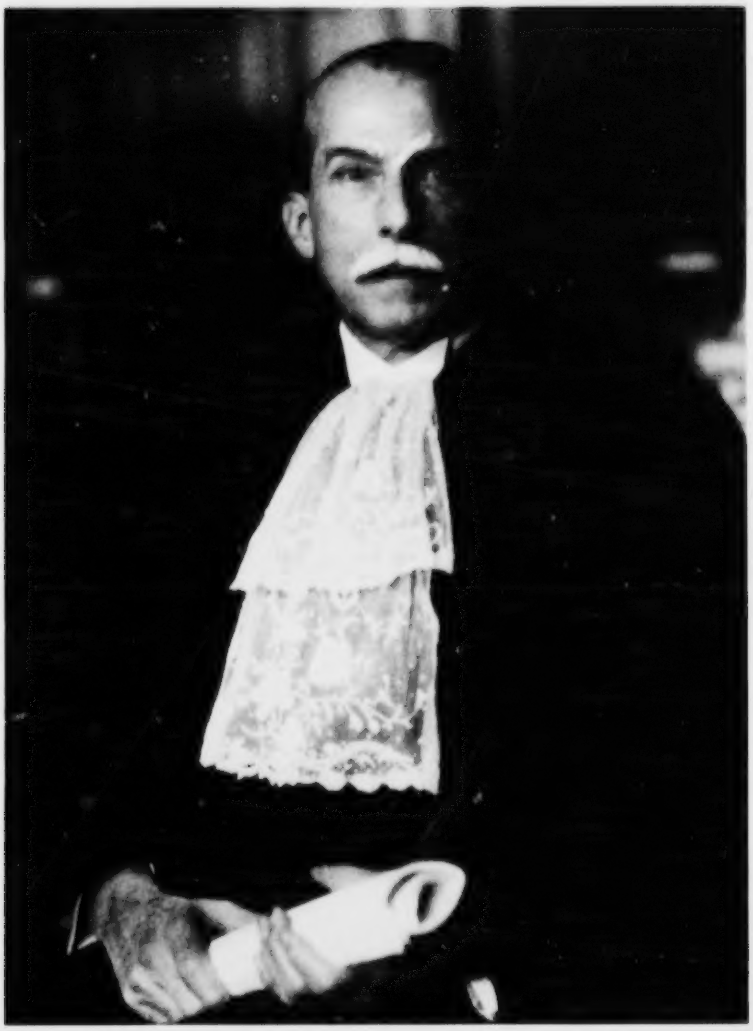
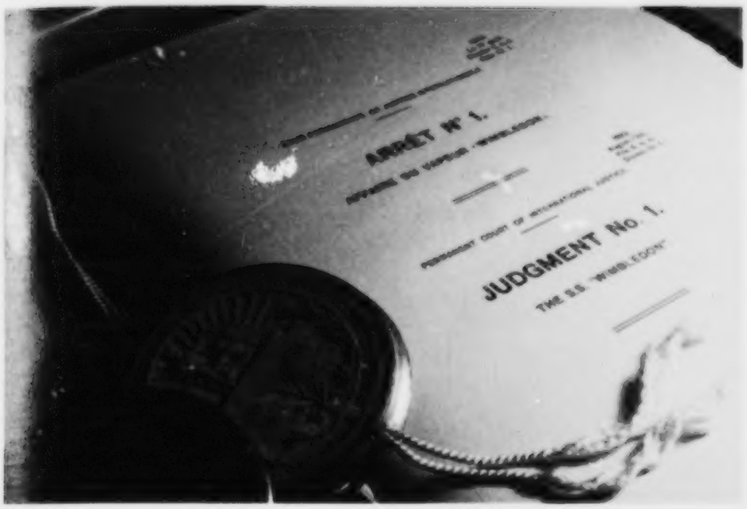
The Peace Palace in 1957 (photo 1) and fifty years on, in 2007 (photo 2). (© UN Photo/VW and © ICJ/Jeroen Bouman)



Portrait of José Gustavo Guerrero (El Salvador). He was the last President of the Permanent Court of International Justice and became the first President of the International Court of Justice, in 1946, thus ensuring continuity between the two Courts. (© ICJ Archives)

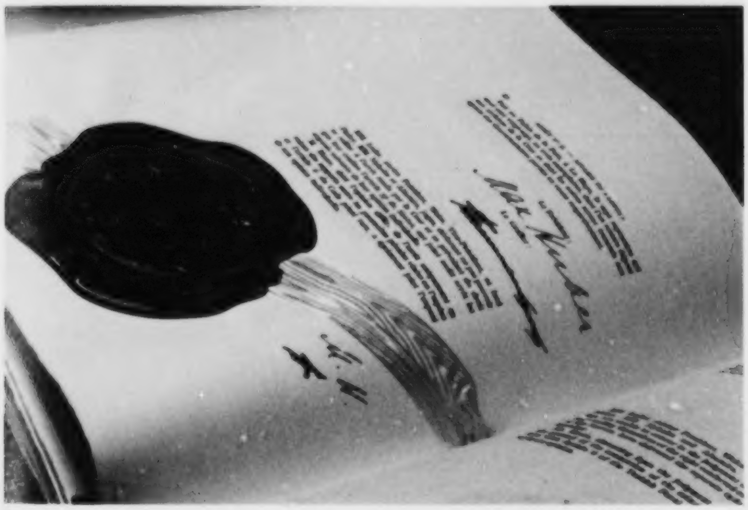


ARRÊT N° 1.

PERMANENT COURT OF INTERNATIONAL JUSTICE

JUDGMENT No. 1.

THE S.S. "WIMBLEDON"



Cover page of the first Judgment rendered by the Permanent Court of International Justice on 17 August 1923, in the case concerning *S.S. "Wimbledon"* (photo 1). Final page of the Judgment rendered by the Permanent Court of International Justice on 7 September 1927, in the *"Lotus"* case (photo 2). (© ICJ/Lybil Ber)

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The United Nations Security Council (photo 1) and General Assembly (photo 2) elect Members of the Court. (© UN Photo/John McIlwaine and Rick Bajornas)

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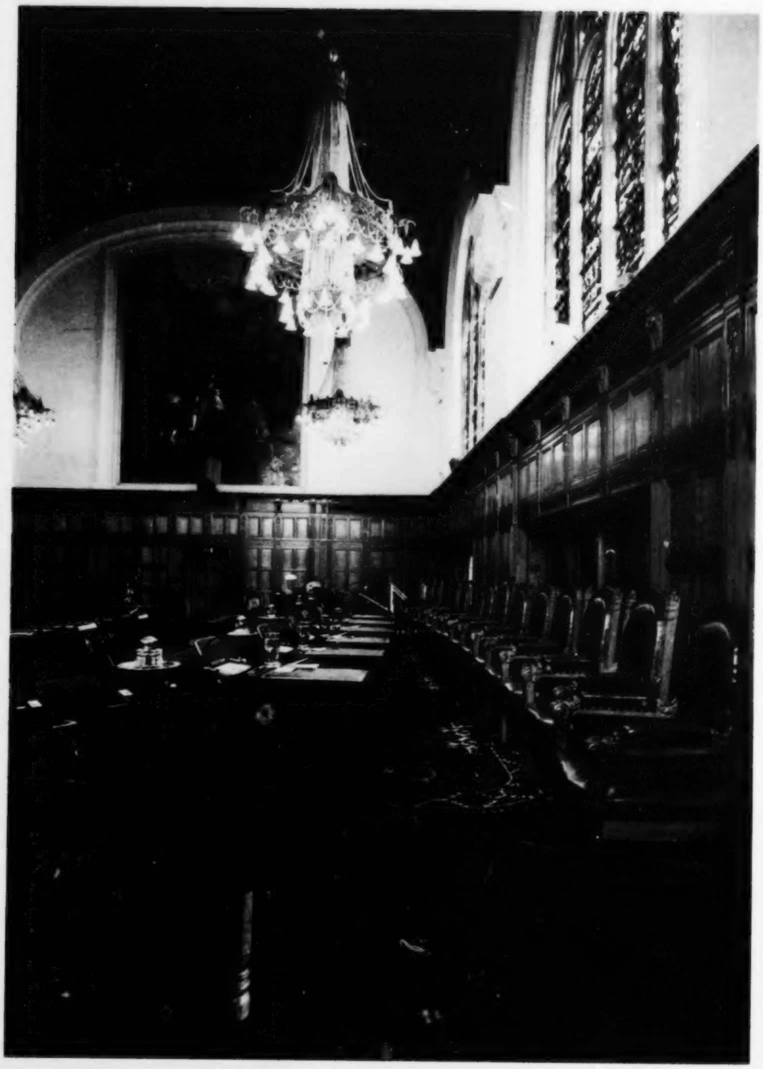
Solemn declarations by Members of the Court. Judge Vi Kuiyuin Wellington Koo, in 1957 (photo 1). Judge Giorgio Gaja, Judge Julia Sebutinde and Judge Dalveer Bhandari, in 2012 (photos 2, 3, and 4). (© ICJ Archives and © ICJ/Frank van Beek)

Members of the Permanent Court of International Justice in the Court's former Deliberation Chamber, the Bol Room in the Peace Palace, at the end of the 1930s. Left to right: Judges Altamira (Spain), Erich (Finland), De Visscher (Belgium); Registrar López Oliván (Spain); Judge Fromageot (France); Vice-President Sir Cecil Hurst (United Kingdom); President Guerrero (El Salvador); Judges Jonkheer van Eysinga (Netherlands), Count Rostworowski (Poland), Cheng (China), Negulesco (Romania), Hudson (United States of America), Nagaoka (Japan). (© ICJ Archives)

The current composition of the Court. First row, left to right: Vice-President Bernardo Sepúlveda-Amor (Mexico); President Peter Tomka (Slovakia); Judge Hisashi Owada (Japan). Second row, left to right: Judges Mohamed Bennouna (Morocco), Ronny Abraham (France), Kenneth Keith (New Zealand) and Leonid Skotnikov (Russian Federation). Third row, left to right: Judges Christopher Greenwood (United Kingdom), Antônio Augusto Cançado Trindade (Brazil), Abdulqawi Ahmed Yusuf (Somalia) and Xue Hanqin (China). Fourth row, left to right: Registrar Philippe Couvreur (Belgium); Judges Julia Sebutinde (Uganda), Joan E. Donoghue (United States of America), Giorgio Gaja (Italy) and Dalveer Bhandari (India). (© ICJ/Rob Ris)



The Judges' Bench in 2006. (© ICJ Jeroen Bouman)

The Judges' Bench in 2014. (© ICJ/Frank van Beek)

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Messengers of the Court in the 1950s (photo 1) and in 2005 (photo 2). (© ICJ Archives and © ICJ/Jeroen Bouman)

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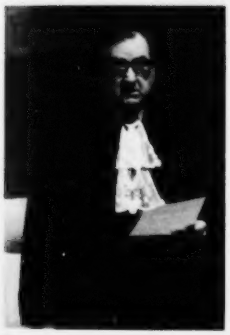

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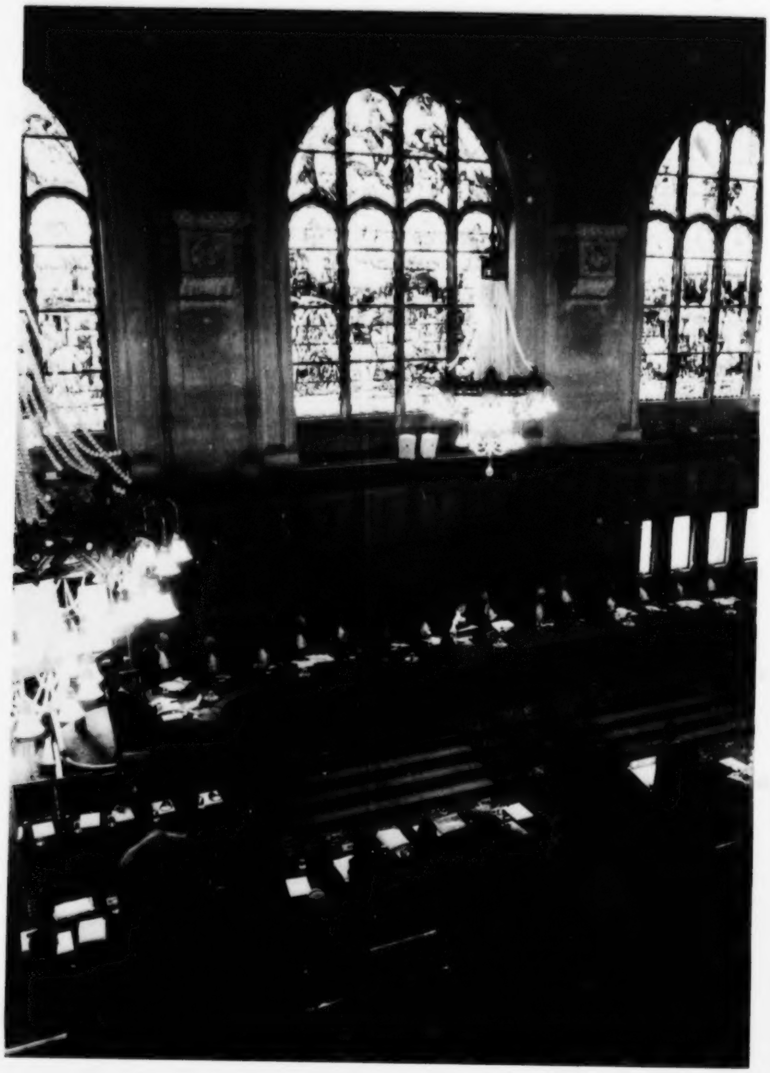
Judge *ad hoc* Suzanne Bastid in 1985 (photo 1). She was chosen by Tunisia to sit in the *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya)*. To the right, Judge Mohammed Bedjaoui. Solemn declarations by Judges *ad hoc* Ian Callinan (2014), Hilary Charlesworth (2013) and Jean-Pierre Cot (2014) (photos 2, 3 and 4). (© ICJ Archives and © ICJ/Frank van Beek)



The Great Hall of Justice in 2004. (© ICJ Archives)

The Great Hall of Justice after renovation in 2012-2013. (© ICJ/Frank van Beek)

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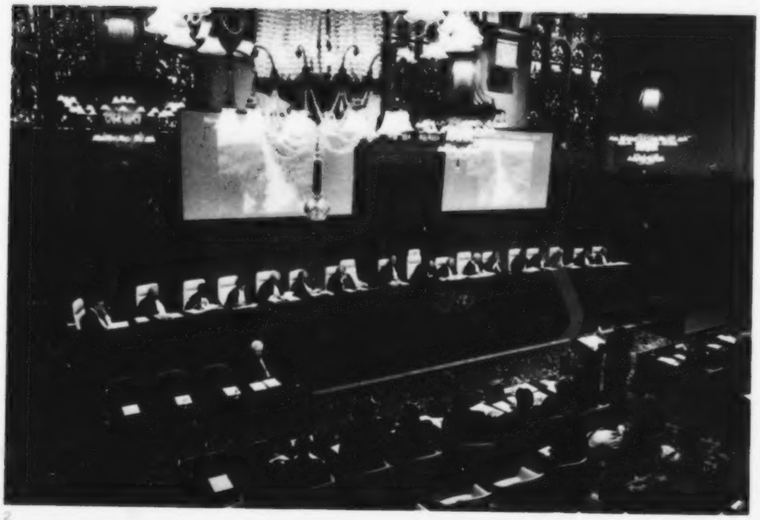

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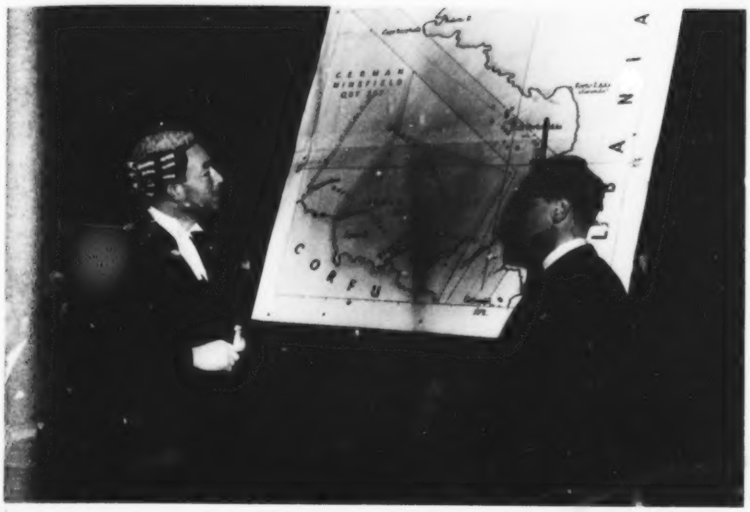
Oral pleadings in the Great Hall of Justice : in 1939 (photo 1) and in 2013 (photo 2). (© PCIJ Archives and © ICJ/Frank van Beek)



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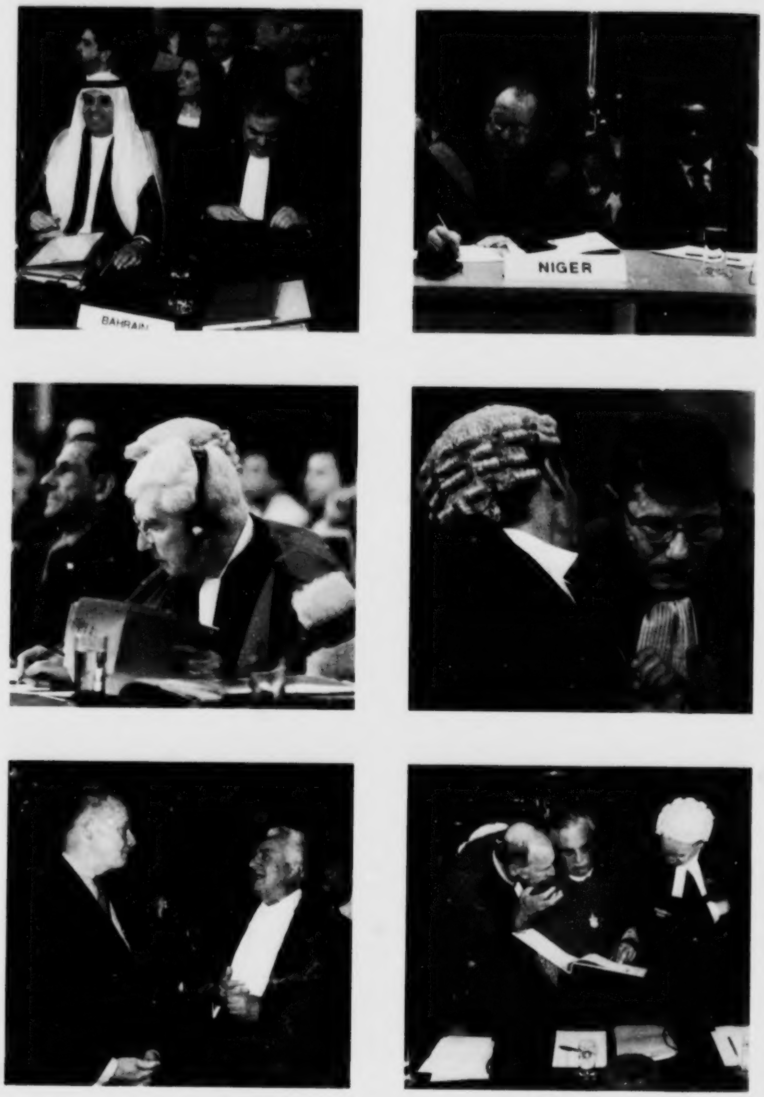
Presentation of maps in the Great Hall of Justice: in November 1948, during the hearings in the case concerning the *Corfu Channel (United Kingdom* v. *Albania)* (photo 1), and in January 2014, during the delivery of the Judgment of the Court in the case concerning the *Maritime Dispute (Peru* v. *Chile)* (photo 2). Today, the judges have screens on the Bench to view the maps and other documents presented by the parties. (© ICJ Archives and © ICJ/Frank van Beek)


BAHRAIN
NIGER

Agents, counsel and other members of delegations from around the world during public sittings of the Court. (© ICJ Archives)

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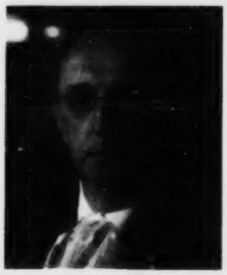
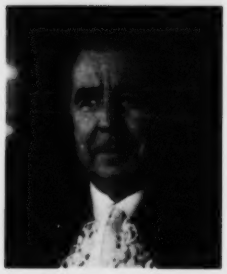
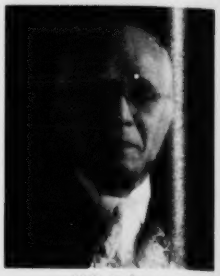
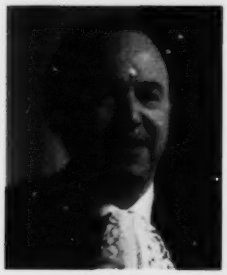
Members of delegations in the Great Hall of Justice in 1948 (photo 1) and, sixty years on, in 2008 (photo 2). (© ICJ Archives and © ICJ/Nils van Houts)

The current Composition of the International

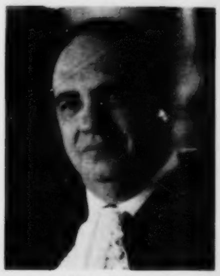

H.E. President
Peter Tomka
(Slovakia)


H.E. Vice-President
Bernardo Sepúlveda-Amor
(Mexico)


H.E. Judge
Hisashi Owada
(Japan)


H.E. Judge
Mohamed Bennouna
(Morocco)

H.E. Judge
Leonid Skotnikov
(Russian Federation)


H.E. Judge
Antônio Augusto Cançado Trindade
(Brazil)

H.E. Judge
Xue Hanqin
(China)

H.E. Judge
Joan E. Donoghue
(United States of America)

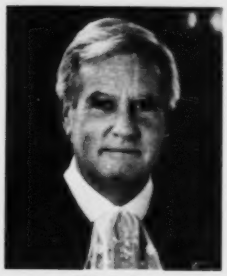
H.E. Judge
Giorgio Gaja
(Italy)

Court of Justice: the Judges

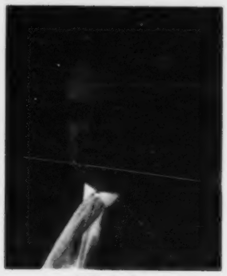
H.E. Judge
Ronny Abraham
(France)

H.E. Judge
Kenneth Keith
(New Zealand)

H.E. Judge
Abdulqawi Ahmed Yusuf
(Somalia)


H.E. Judge
Christopher Greenwood
(United Kingdom)

H.E. Judge
Julia Sebutinde
(Uganda)


H.E. Judge
Dalveer Bhandari
(India)

The Registrar

H.E. Philippe Couvreur
(Belgium)

(© ICJ Rob Ris and © ICJ Frank van Beek for Judge Greenwood)

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The Members of the Court in the Deliberation Room on the top floor of the Judges' Building, in 2006 (photo 1), and the Judges' Building, to the rear of the Peace Palace, in 2014 (photo 2). (© ICJ/Jeroen Bouman and © ICJ/Frank van Beek)

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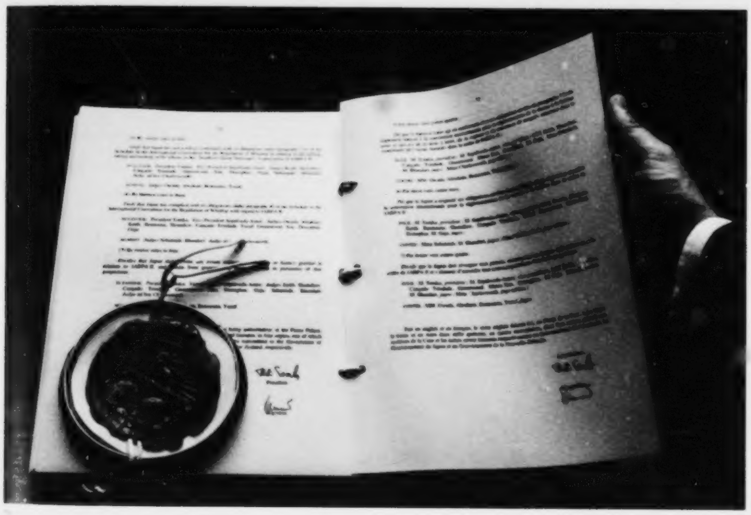

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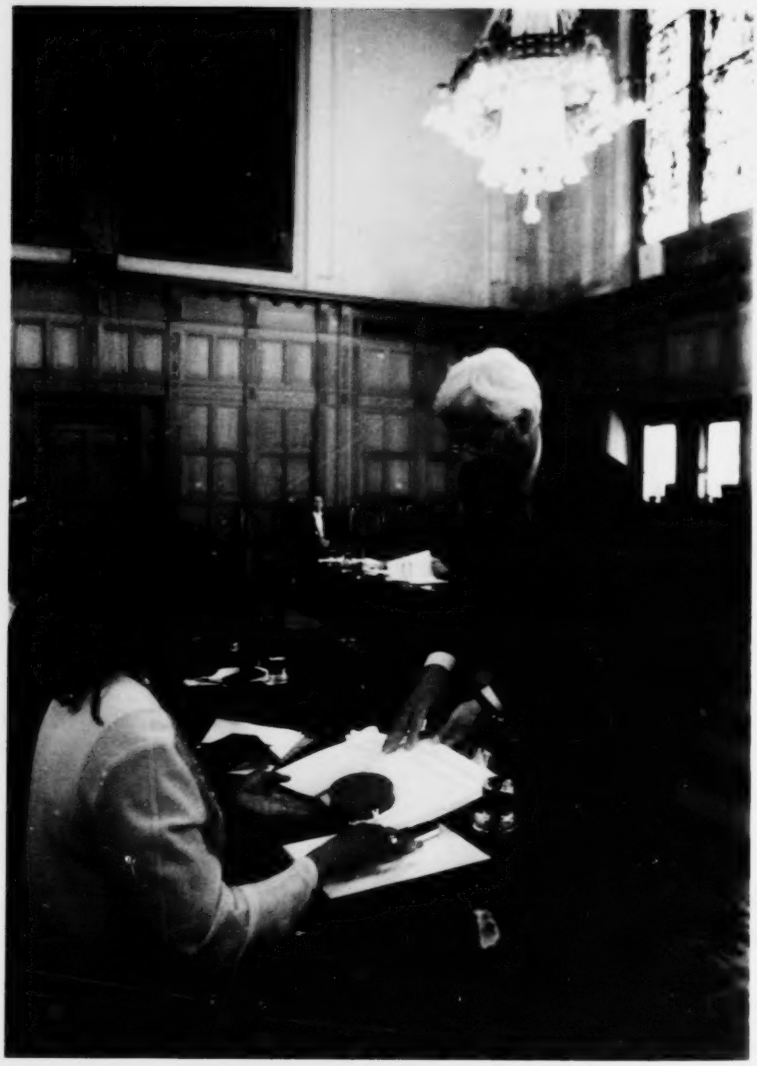
The official seal of the International Court of Justice (photo 1) and a sealed copy of a judgment (photo 2). (© ICJ/Jeroen Bouman and © ICJ/Frank van Beek)



A sealed copy of a judgment is given to each of the parties following the delivery of the decision a
the public sitting. (© ICJ/Jeroen Bouman)

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The Registry of the International Court of Justice, in the 1930s (photo 1) and in 2011 (photo 2). (© ICJ Archives and © ICJ/Rob Ris (Max Koot Studio))

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Their Majesties the Emperor and Empress of Japan visit the Court on 24 May 2000, during the presidency of H.E. Judge Gilbert Guillaume (photo 1). Visit of the President of the Russian Federation, H.E. Mr. Vladimir Putin, on 2 November 2005, during the presidency of H.E. Judge Shi Jiuyong (photo 2). (© ICJ Archives and © ICJ/Jeroen Bouman)

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Visit of H.M. King Abdullah II of Jordan on 31 October 2006, during the presidency of H.E. Judge Rosalyn Higgins (photo 1). Visit of the President of Ireland, H.E. Mrs. Mary McAleese, on 2 May 2011, during the presidency of H.E. Judge Hisashi Owada (photo 2). (© ICJ Archives and © ICJ/Gerald van Dalen)

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Visit of United Nations Secretary-General, H.E. Mr. Ban Ki-moon, on 7 April 2013 (photo 1) and visit of the President of the State of Israel, H.E. Mr. Shimon Peres, on 30 September 2013 (photo 2), during the presidency of H.E. Judge Peter Tomka. (© UN Photo/Rick Bajornas and © ICJ/Frank van Beek)

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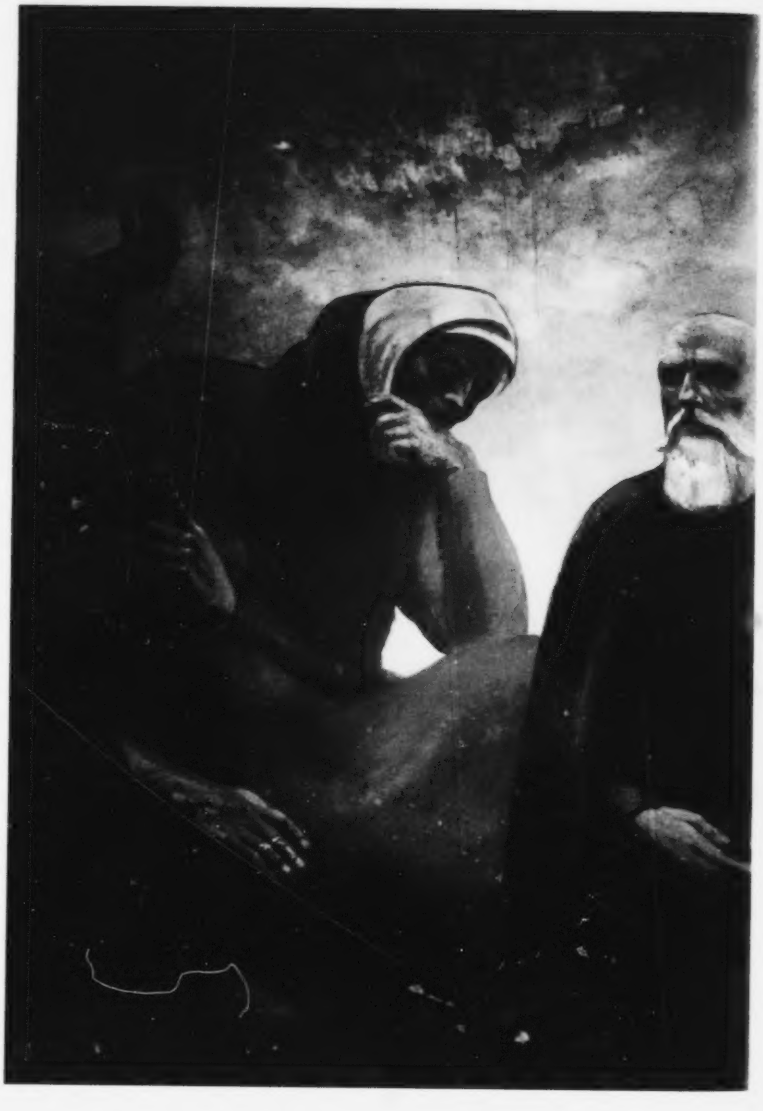
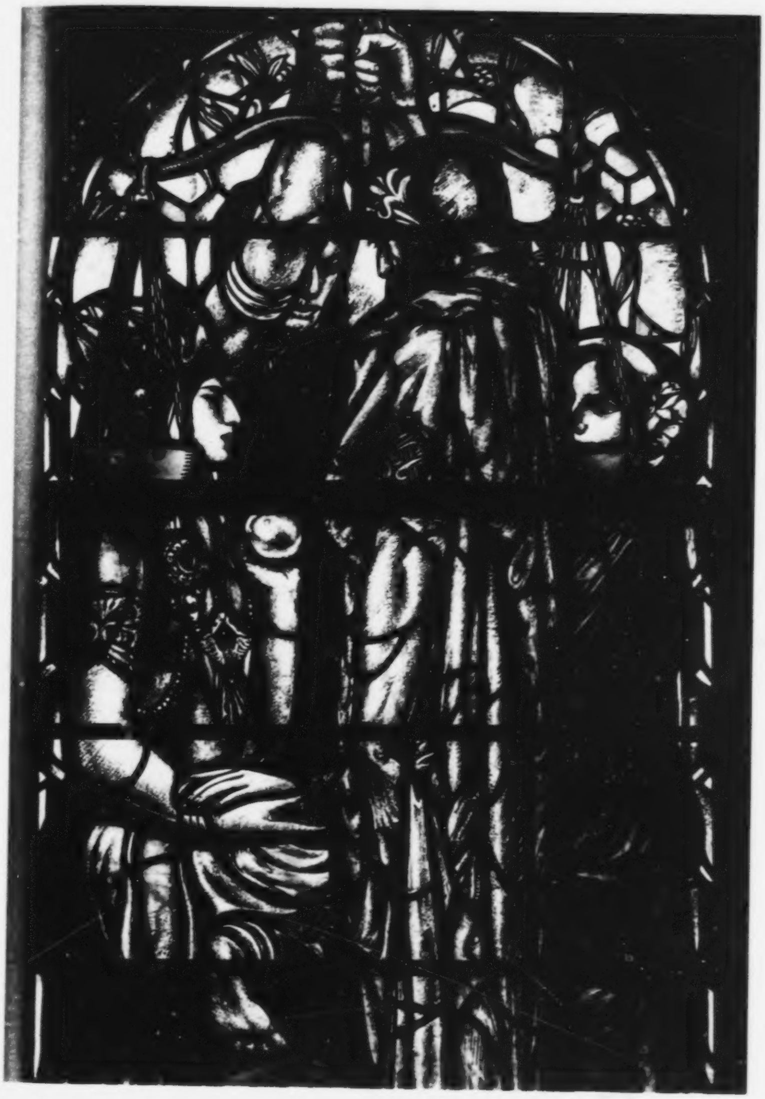
The Red Room is hung with portraits of former Presidents of the Court. Here, from left to right (photo 1): Peruvian Judge José Luis Bustamante y Rivero, ICJ President from 1967 to 1970, and Polish Judge Manfred Lachs, Member of the Court from 1967 to 1993 (three consecutive terms), President from 1973 to 1976. This is where the Judges assemble before every public hearing and during breaks, as shown here (photo 2) during the current presidency of Slovakian Judge Peter Tomka. (© ICJ/Lybil Ber)



Close-up of the painting entitled *La Paix et la Justice* (1914), a gift from France. This huge canvas by artist Paul-Albert Besnard (1849-1934) adorns the left wall of the Great Hall of Justice. (© ICJ/Frank van Beek)



Close-up of one of the stained-glass windows in the Great Hall of Justice. A gift from the United Kingdom, these windows are the work of Scottish artist Douglas Strachan (1875-1950). Designed to be viewed from left to right, they form an impressive tableau entitled *The Evolution of the Peace Ideal*. (© ICJ/Frank van Beek)

The Members of the Court and the Registrar in the Japanese Room of the Peace Palace in 2012
(© ICJ/Lybil Ber)

mbers of the Court on the main staircase of the Peace Palace in 2012. (© ICJ/Lybil Ber)

The seal of the Court is affixed to official copies of decisions (judgments, advisory opinions and orders), one copy of which is given to each of the parties, while one is held in the Court's archives (© ICJ/Frank van Beek)

8. Cases Brought Before the Court

Between 18 April 1946 and 31 December 2013, the Court was called upon to deal with 129 contentious cases in which it delivered 114 Judgments and made 463 Orders. During the same period, it dealt with 26 advisory proceedings, in which it gave 27 Advisory Opinions and made 37 Orders. Brief summaries of these cases and of the decisions reached with regard to each one are given below[28].

Contentious cases

1.1 *Corfu Channel (United Kingdom v. Albania)*

This dispute gave rise to three Judgments by the Court. It arose out of the explosions of mines by which some British warships suffered damage while passing through the Corfu Channel in 1946, in a part of the Albanian waters which had been previously swept. The ships were severely damaged and members of the crew were killed. The United Kingdom seised the Court of the dispute by an Application filed on 22 May 1947 and accused Albania of having laid or allowed a third State to lay the mines after mine-clearing operations had been carried out by the Allied naval authorities. The case had previously been brought before the United Nations and, in consequence of a recommendation by the Security Council, had been referred to the Court.

In a first Judgment, rendered on 25 March 1948, the Court dealt with the question of its jurisdiction and the admissibility of the Application, which Albania had raised. The Court found, *inter alia*, that a communication dated 2 July 1947, addressed to it by the Government of Albania, constituted a voluntary acceptance of its jurisdiction. It recalled on that occasion that the consent of the parties to the exercise of its jurisdiction was not subject to any particular conditions of form and stated that, at that juncture, it could not hold to be irregular a proceeding not precluded by any provision in those texts.

A second Judgment, rendered on 9 April 1949, related to the merits of the dispute. The Court found that Albania was responsible under international law for the explosions that had taken place in Albanian waters and for the damage and loss of life which had ensued. It did not accept the view that Albania had itself laid the mines or the purported connivance of Albania with a mine-laying operation carried out by the Yugoslav Navy at the request of Albania. On the other hand, it held that the mines could not have been laid without the knowledge of the Albanian Government. On that occasion, it indicated in particular that the exclusive control exercised by a State within its frontiers might make it impossible to furnish direct proof of facts incurring its international responsibility. The State which is the victim must, in that case, be allowed a more liberal recourse to inferences of fact and circumstantial evidence; such indirect evidence must be regarded as of especial weight when based on a series of facts, linked together and leading logically to a single conclusion. Albania, for its part, had submitted a counter-claim against the United Kingdom. It accused the latter of having violated Albanian sovereignty by sending warships into Albanian territorial waters and of carrying out minesweeping operations in Albanian waters after the explosions. The Court did not accept the first of these complaints but found that the United Kingdom had exercised the right of innocent passage through international straits. On the other hand, it found that the minesweeping had violated Albanian sovereignty, because it had been carried out against the will of the Albanian Government. In particular, it did not accept the notion of "self-help" asserted by the United Kingdom to justify its intervention.

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[28] These summaries in no way involve the responsibility of the Court and cannot be quoted against the texts of the relevant decisions, of which they do not constitute an interpretation.

In a third Judgment, rendered on 15 December 1949, the Court assessed the amount of reparation owed to the United Kingdom and ordered Albania to pay £844,000 (see also No. 1.12 below).

1.2. Fisheries (United Kingdom v. Norway)

The Judgment delivered by the Court in this case ended a long controversy between the United Kingdom and Norway which had aroused considerable interest in other maritime States. In 1935 Norway enacted a decree by which it reserved certain fishing grounds situated off its northern coast for the exclusive use of its own fishermen. The question at issue was whether this decree, which laid down a method for drawing the baselines from which the width of the Norwegian territorial waters had to be calculated, was valid international law. This question was rendered particularly delicate by the intricacies of the Norwegian coastal zone, with its many fjords, bays, islands, islets and reefs. The United Kingdom contended, *inter alia*, that some of the baselines fixed by the decree did not accord with the general direction of the coast and were not drawn in a reasonable manner. In its Judgment of 18 December 1951, the Court found that, contrary to the submissions of the United Kingdom, neither the method nor the actual baselines stipulated by the 1935 Decree were contrary to international law.

1.3. Protection of French Nationals and Protected Persons in Egypt (France v. Egypt)

As a consequence of certain measures adopted by the Egyptian Government against the property and persons of various French nationals and protected persons in Egypt, France instituted proceedings in which it invoked the Montreux

Convention of 1935, concerning the abrogation of the capitulations in Egypt. However, the case was not proceeded with, as the Egyptian Government desisted from the measures in question. As France decided not to press its suit and as Egypt had no objection, the case was removed from the Court's List (Order of 29 March 1950).

1.4. *Asylum (Colombia/Peru)*

The granting of diplomatic asylum in the Colombian Embassy at Lima, on 3 January 1949, to a Peruvian national, Victor Raúl Haya de la Torre, a political leader accused of having instigated a military rebellion, was the subject of a dispute between Peru and Colombia which the Parties agreed to submit to the Court. The Pan-American Havana Convention on Asylum (1928) laid down that, subject to certain conditions, asylum could be granted in a foreign embassy to a political refugee who was a national of the territorial State. The question in dispute was whether Colombia, as the State granting the asylum, was entitled unilaterally to "qualify" the offence committed by the refugee in a manner binding on the territorial State — that is, to decide whether it was a political offence or a common crime. Furthermore, the Court was asked to decide whether the territorial State was bound to afford the necessary guarantees to enable the refugee to leave the country in safety. In its Judgment of 20 November 1950, the Court answered both these questions in the negative, but at the same time it specified that Peru had not proved that Mr. Haya de la Torre was a common criminal. Lastly, it found in favour of a counter-claim submitted by Peru that Mr. Haya de la Torre had been granted asylum in violation of the Havana Convention.

1.5. *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru)*

On the very day on which the Court delivered the Judgment on the *Asylum* case (see No. 1.4 above), Colombia filed a Request for interpretation, seeking a reply to the question of whether the Judgment implied an obligation to surrender the refugee to the Peruvian authorities. In a Judgment delivered on 27 November 1950, the Court declared the request inadmissible.

1.6. *Haya de la Torre (Colombia v. Peru)*

This case, a sequel to the earlier proceedings (see Nos. 1.4-1.5 above), was instituted by Colombia by means of a fresh Application. Immediately after the Judgment of 20 November 1950, Peru had called upon Colombia to surrender Mr. Haya de la Torre. Colombia refused to do so, maintaining that neither the applicable legal provisions nor the Court's Judgment placed it under an obligation to surrender the refugee to the Peruvian authorities. The Court confirmed this view in its Judgment of 13 June 1951. It declared that the question was a new one, and that although the Havana Convention expressly prescribed the surrender of common criminals to the local authorities, no obligation of the kind existed in regard to political offenders. While confirming that diplomatic asylum had been irregularly granted and that on this ground Peru was entitled to demand its termination, the Court declared that Colombia was not bound to surrender the refugee; these two conclusions, it stated, were not contradictory because there were other ways in which the asylum could be terminated besides the surrender of the refugee.

1.7. Rights of Nationals of the United States of America in Morocco (France v. United States of America)

By a decree of 30 December 1948, the French authorities in the Moroccan Protectorate imposed a system of licence control in respect of imports not involving an official allocation of currency, and limited these imports to a number of products indispensable to the Moroccan economy. The United States maintained that this measure affected its rights under treaties with Morocco and contended that, in accordance with these treaties and with the General Act of Algeciras of 1906, no Moroccan law or regulation could be applied to its nationals in Morocco without its previous consent. In its Judgment of 27 August 1952, the Court held that the import controls were contrary to the Treaty between the United States and Morocco of 1836 and the General Act of Algeciras since they involved discrimination in favour of France against the United States. The Court then considered the extent of the consular jurisdiction of the United States in Morocco and held that the United States was entitled to exercise such jurisdiction in the French Zone in all disputes, civil or criminal, between United States citizens or persons protected by the United States. It was also entitled to exercise such jurisdiction to the extent required by the relevant provisions of the General Act of Algeciras. The Court rejected the contention of the United States that its consular jurisdiction included cases in which only the defendant was a citizen or protégé of the United States. It also rejected the claim by the United States that the application to United States citizens of laws and regulations in the French Zone of Morocco required the prior assent of the United States Government. Such assent was required only in so far as the intervention of the consular courts of the United States was necessary for the effective enforcement of such laws or regulations with respect to United States citizens. The Court rejected a counter-claim by the United States that its nationals in Morocco were entitled to immunity from taxation. It also dealt with the question of the valuation of imports by the Moroccan customs authorities.

1.8. Ambatielos (Greece v. United Kingdom)

In 1919, Nicolas Ambatielos, a Greek shipowner, entered into a contract for the purchase of ships with the Government of the United Kingdom. He claimed he had suffered damage through the failure of that Government to carry out the terms of the contract and as a result of certain judgments given against him by the English courts in circumstances said to involve the violation of international law. The Greek Government took up the case of its national and claimed that the United Kingdom was under a duty to submit the dispute to arbitration in accordance with Treaties between the United Kingdom and Greece of 1886 and 1926. The United Kingdom objected to the Court's jurisdiction. In a Judgment of 1 July 1952, the Court held that it had jurisdiction to decide whether the United Kingdom was under a duty to submit the dispute to arbitration but, on the other hand, that it had no jurisdiction to deal with the merits of the Ambatielos claim. In a further Judgment of 19 May 1953, the Court decided that the dispute was one which the United Kingdom was under a duty to submit to arbitration in accordance with the Treaties of 1886 and 1926.

1.9. *Anglo-Iranian Oil Co. (United Kingdom v. Iran)*

In 1933 an oil concession agreement was concluded between the Government of Iran and the Anglo-Iranian Oil Company. In 1951, laws were passed in Iran for the nationalization of the oil industry. These laws resulted in a dispute between Iran and the company. The United Kingdom took up the company's case and instituted proceedings before the Court. Iran disputed the Court's jurisdiction. In its Judgment of 22 July 1952, the Court decided that it had no jurisdiction to deal with the dispute. Its jurisdiction depended on the declarations by Iran and the United Kingdom accepting the Court's compulsory jurisdiction under Article 36, paragraph 2, of the Court's Statute. The Court held that the declaration by Iran, which was ratified in 1932, covered only disputes based on treaties concluded by Iran after that date, whereas the claim of the United Kingdom was directly or indirectly based on treaties concluded prior to 1932. The Court also rejected the view that the agreement of 1933 was both a concessionary contract between Iran and the company and an international treaty between Iran and the United Kingdom, since the United Kingdom was not a party to the contract. The position was not altered by the fact that the concessionary contract was negotiated through the good offices of the Council of the League of Nations. By an Order of 5 July 1951, the Court had indicated interim measures of protection, that is, provisional measures for protecting the rights alleged by either party, in proceedings already instituted, until a final judgment was given. In its Judgment, the Court declared that the Order had ceased to be operative.

1.10. *Minquiers and Ecrehos (France/United Kingdom)*

The Minquiers and Ecrehos are two groups of islets situated between the British island of Jersey and the coast of France. Under a Special Agreement between France and the United Kingdom, the Court was asked to determine which of the Parties had produced the more convincing proof of title to these groups of islets. After the conquest of England by William, Duke of Normandy, in 1066, the islands had formed part of the Union between England and Normandy which lasted until 1204, when Philip Augustus of France conquered Normandy but failed to occupy the islands. The United Kingdom submitted that the islands then remained united with England and that this situation was placed on a legal basis by subsequent treaties between the two countries. France contended that the Minquiers and Ecrehos were held by France after 1204, and referred to the same medieval treaties as those relied on by the United Kingdom. In its Judgment of 17 November 1953, the Court considered that none of those treaties stated specifically which islands were held by the King of England or by the King of France. Moreover, what was of decisive importance was not indirect presumptions based on matters in the Middle Ages, but direct evidence of possession and the actual exercise of sovereignty. After considering this evidence, the Court arrived at the conclusion that the sovereignty over the Minquiers and Ecrehos belonged to the United Kingdom.

1.11. Nottebohm (Liechtenstein v. Guatemala)

In this case, Liechtenstein claimed restitution and compensation from the Government of Guatemala on the ground that the latter had acted towards Friedrich Nottebohm, a citizen of Liechtenstein, in a manner contrary to international law. Guatemala objected to the Court's jurisdiction but the Court overruled this objection in a Judgment of 18 November 1953. In a second Judgment, of 6 April 1955, the Court held that Liechtenstein's claim was inadmissible on grounds relating to Mr. Nottebohm's nationality. It was the bond of nationality between a State and an individual which alone conferred upon the State the right to put forward an international claim on his behalf. Mr. Nottebohm, who was then a German national, had settled in Guatemala in 1905 and continued to reside there. In October 1939 — after the beginning of the Second World War — while on a visit to Europe, he obtained Liechtenstein nationality and returned to Guatemala in 1940, where he resumed his former business activities until his removal as a result of war measures in 1943. On the international plane, the grant of nationality is entitled to recognition by other States only if it represents a genuine connection between the individual and the State granting its nationality. Mr. Nottebohm's nationality, however, was not based on any genuine prior link with Liechtenstein and the sole object of his naturalization was to enable him to acquire the status of a neutral national in time of war. For these reasons, Liechtenstein was not entitled to take up his case and put forward an international claim on his behalf against Guatemala.

1.12. Monetary Gold Removed from Rome in 1943
(Italy v. France, United Kingdom and United States of America)

A certain quantity of monetary gold was removed by the Germans from Rome in 1943. It was later recovered in Germany and found to belong to Albania. The 1946 Agreement on Reparation from Germany provided that monetary gold found in Germany should be pooled for distribution among the countries entitled to receive a share of it. The United Kingdom claimed that the gold should be delivered to it in partial satisfaction of the Court's Judgment of 1949 in the *Corfu Channel* case (see above, p. 109). Italy claimed that the gold should be delivered to it in partial satisfaction for the damage which it alleged it had suffered as a result of an Albanian law of 13 January 1945. In the Washington statement of 25 April 1951, the Governments of France, the United Kingdom and the United States, to whom the implementation of the reparations agreement had been entrusted, decided that the gold should be delivered to the United Kingdom unless, within a certain time-limit, Italy or Albania applied to the Court requesting it to adjudicate on their respective rights. Albania took no action, but Italy made an Application to the Court. Later, however, Italy raised the preliminary question as to whether the Court had jurisdiction to adjudicate upon the validity of its claim against Albania. In its Judgment of 15 June 1954, the Court found that, without the consent of Albania, it could not deal with a dispute between that country and Italy and that it was therefore unable to decide the questions submitted.

1.13. *Electricite de Beyrouth Company (France* v. *Lebanon)*

This case arose out of certain measures taken by the Lebanese Government which a French company regarded as contrary to undertakings that that Government had given in 1948 as part of an agreement with France. The French Government referred the dispute to the Court, but the Lebanese Government and the company entered into an agreement for the settlement of the dispute and the case was removed from the List by an Order of 29 July 1954.

1.14-1.15. *Treatment in Hungary of Aircraft and Crew of the United States of America (United States of America* v. *Hungary; United States of America* v. *USSR)*

1.16. *Aerial Incident of 10 March 1953 (United States of America* v. *Czechoslovakia)*

1.17. *Aerial Incident of 7 October 1952 (United States of America* v. *USSR)*

1.18. *Aerial Incident of 4 September 1954 (United States of America* v. *USSR)*

1.19. *Aerial Incident of 7 November 1954 (United States of America* v. *USSR)*

In these six cases the United States did not claim that the States against which the Applications were made had given any consent to jurisdiction, but relied on Article 36, paragraph 1, of the Court's Statute, which provides that the jurisdiction of the Court comprises all cases which the parties refer to it. The United States stated that it submitted to the Court's jurisdiction for the purpose of the above-mentioned cases and indicated that it was open to the other Governments concerned to do likewise. These Governments having stated in each case that they were unable to submit to the Court's jurisdiction in the matter, the Court found that it did not have jurisdiction to deal with the cases, and removed them respectively from its List by Orders dated 12 July 1954 (Nos. 1.14-1.15), 14 March 1956 (Nos. 1.16 and 1.17), 9 December 1958 (No. 1.18) and 7 October 1959 (No. 1.19).

1.20-1.21. Antarctica (United Kingdom v. Argentina; United Kingdom v. Chile)

On 4 May 1955, the United Kingdom instituted proceedings before the Court against Argentina and Chile concerning disputes as to the sovereignty over certain lands and islands in the Antarctic. In its Applications to the Court, the United Kingdom stated that it submitted to the Court's jurisdiction for the purposes of the case, and although, as far as it was aware, Argentina and Chile had not yet accepted the Court's jurisdiction, they were legally qualified to do so. Moreover, the United Kingdom relied on Article 36, paragraph 1, of the Court's Statute. In a letter of 15 July 1955, Chile informed the Court that in its view the Application was unfounded and that it was not open to the Court to exercise jurisdiction. In a Note of 1 August 1955, Argentina informed the Court of its refusal to accept the Court's jurisdiction to deal with the case. In these circumstances, the Court found that neither Chile nor Argentina had accepted its jurisdiction to deal with the cases, and, on 16 March 1956, Orders were made removing them from its List.

1.22. Certain Norwegian Loans (France v. Norway)

Certain Norwegian loans had been floated in France between 1885 and 1909. The bonds securing them stated the amount of the obligation in gold, or in currency convertible into gold, as well as in various national currencies. From the time when Norway suspended the convertibility of its currency into gold — on several occasions after 1914 — the loans had been serviced in Norwegian kroner. The French Government, espousing the cause of the French bondholders, filed an Application requesting the Court to declare that the debt should be discharged by payment of the gold value of the coupons of the bonds on the date of payment and of the gold value of the redeemed bonds on the date of repayment. The Norwegian Government raised a number of preliminary objections to the jurisdiction of the Court and, in the Judgment it delivered on 6 July 1957, the Court found that it was without jurisdiction to adjudicate on the dispute. Indeed, the Court held that, since its jurisdiction depended upon the two unilateral declarations made by the Parties, jurisdiction was conferred upon the Court only to the extent to which those declarations coincided in conferring it. The Norwegian Government, which had considered the dispute to fall entirely within its national jurisdiction, was therefore entitled, by virtue of the condition of reciprocity, to invoke in its own favour, and under the same conditions, the reservation contained in the French declaration which excluded from the jurisdiction of the Court differences relating to matters which were "essentially within the national jurisdiction as understood by the Government of the French Republic".

1.23. *Right of Passage over Indian Territory (Portugal v. India)*

The Portuguese possessions in India included the two enclaves of Dadra and Nagar-Aveli which, in mid-1954, had passed under an autonomous local administration. Portugal claimed that it had a right of passage to those enclaves and between one enclave and the other to the extent necessary for the exercise of its sovereignty and subject to the regulation and control of India; it also claimed that, in July 1954, contrary to the practice previously followed, India had prevented it from exercising that right and that that situation should be redressed. A first Judgment, delivered on 26 November 1957, related to the jurisdiction of the Court, which had been challenged by India. The Court rejected four of the preliminary objections raised by India and joined the other two to the merits. In a second Judgment, delivered on 12 April 1960, after rejecting the two remaining preliminary objections, the Court gave its decision on the claims of Portugal, which India maintained were unfounded. The Court found that Portugal had in 1954 the right of passage claimed by it but that such right did not extend to armed forces, armed police, arms and ammunition, and that India had not acted contrary to the obligations imposed on it by the existence of that right.

1.24. *Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden)*

The Swedish authorities had placed an infant of Netherlands nationality residing in Sweden under the régime of protective upbringing instituted by Swedish law for the protection of children and young persons. The father of the child, jointly with the deputy-guardian appointed by a Netherlands court, appealed against the action of the Swedish authorities. The measure of protective upbringing was, however, maintained. The Netherlands claimed that the decisions which instituted and maintained the protective upbringing were not in conformity with Sweden's obligations under the Hague Convention of 1902 governing the guardianship of infants, the provisions of which were based on the principle that the national law of the infant was applicable. In its Judgment of 28 November 1958, the Court held that the 1902 Convention did not include within its scope the matter of the protection of children as understood by the Swedish law on the protection of children and young persons and that the Convention could not have given rise to obligations in a field outside the matter with which it was concerned. Accordingly, the Court did not, in this case, find any failure to observe the Convention on the part of Sweden.

1.25. *Interhandel (Switzerland v. United States of America)*

In 1942 the Government of the United States vested almost all the shares of the General Aniline and Film Corporation (GAF), a company incorporated in the United States, on the ground that those shares, which were owned by Interhandel, a company registered in Basel, belonged in reality to I.G. Farbenindustrie of Frankfurt, or that GAF was in one way or another controlled by the German company. On 1 October 1957, Switzerland applied to the Court for a declaration that the United States was under an obligation to restore the vested assets to Interhandel or, alternatively, that the dispute on the matter between Switzerland and the United States was one fit for submission for judicial settlement, arbitration or conciliation. Two days later Switzerland filed a request for the indication of provisional measures to the effect that the Court should call upon the United States not to part with the assets in question so long as proceedings were pending before the Court. On 24 October 1957, the Court made an Order noting that, in the light of the information furnished, there appeared to be no need for provisional measures. The United States raised preliminary objections to the Court's jurisdiction, and in a Judgment delivered on 21 March 1959 the Court found the Swiss application inadmissible, because Interhandel had not exhausted the remedies available to it in the United States courts.

1.26. Aerial Incident of 27 July 1955 (Israel v. Bulgaria)

This case arose out of the destruction by Bulgarian anti-aircraft defence forces of an aircraft belonging to an Israeli airline. Israel instituted proceedings before the Court by means of an Application in October 1957. Bulgaria having challenged the Court's jurisdiction to deal with the claim, Israel contended that, since Bulgaria had in 1921 accepted the compulsory jurisdiction of the Permanent Court of International Justice for an unlimited period, that acceptance became applicable, when Bulgaria was admitted to the United Nations in 1955, to the jurisdiction of the International Court of Justice by virtue of Article 36, paragraph 5, of the present Court's Statute, which provides that declarations made under the Statute of the PCIJ and which are still in force shall be deemed, as between the parties to the present Court's Statute, to be acceptances applicable to the International Court of Justice for the period which they still have to run and in accordance with their terms. In its Judgment on the preliminary objections, delivered on 26 May 1959, the Court found that it was without jurisdiction on the ground that Article 36, paragraph 5, was intended to preserve only declarations in force as between States signatories of the United Nations Charter, and not subsequently to revive undertakings which had lapsed on the dissolution of the PCIJ.

1.27. Aerial Incident of 27 July 1955
(United States of America v. Bulgaria)

This case arose out of the incident which was the subject of the proceedings mentioned above (see No. 1.26 above). The aircraft destroyed by Bulgarian anti-aircraft defence forces was carrying several United States nationals, who all lost their lives. Their Government asked the Court to find Bulgaria liable for the losses thereby caused and to award damages. Bulgaria filed preliminary objections to the Court's jurisdiction, but, before hearings were due to open, the United States informed the Court of its decision, after further consideration, not to proceed with its application. Accordingly, the case was removed from the List by an Order of 30 May 1960.

1.28. *Aerial Incident of 27 July 1955 (United Kingdom v. Bulgaria)*

This case arose out of the same incident as that mentioned above (see Nos. 1.26 and 1.27 above). The aircraft destroyed by Bulgarian anti-aircraft defence forces was carrying several nationals of the United Kingdom and colonies, who all lost their lives. The United Kingdom asked the Court to find Bulgaria liable for the losses thereby caused and to award damages. After filing a Memorial, however, the United Kingdom informed the Court that it wished to discontinue the proceedings in view of the decision of 26 May 1959 whereby the Court found that it lacked jurisdiction in the case brought by Israel. Accordingly, the case was removed from the List by an Order of 3 August 1959.

1.29. *Sovereignty over Certain Frontier Land (Belgium/Netherlands)*

The Court was asked to settle a dispute as to sovereignty over two plots of land situated in an area where the Belgo-Dutch frontier presented certain unusual features, as there had long been a number of enclaves formed by the Belgian commune of Baerle-Duc and the Netherlands commune of Baarle-Nassau. A Communal Minute drawn up between 1836 and 1841 attributed the plots to Baarle-Nassau, whereas a Descriptive Minute and map annexed to the Boundary Convention of 1843 attributed them to Baerle-Duc. The Netherlands maintained that the Boundary Convention recognized the existence of the status quo as determined by the Communal Minute, that the provision by which the two plots were attributed to Belgium was vitiated by an error, and that Netherlands sovereignty over the disputed plots had been established by the exercise of various acts of sovereignty since 1843. After considering the evidence produced, the Court, in a Judgment delivered on 20 June 1959, found that sovereignty over the two disputed plots belonged to Belgium.

1.30. *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*

On 7 October 1894, Honduras and Nicaragua signed a treaty on the delimitation of the frontier between the two countries, one of the Articles of which provided that, in certain circumstances, any points of the boundary line which were left unsettled should be submitted to the decision of the Government of Spain. In October 1904, the King of Spain was asked to determine that part of the frontier line on which the Mixed Boundary Commission appointed by the two countries had been unable to reach agreement. The King gave his arbitral award on 23 December 1906. Nicaragua contested the validity of the award and, in accordance with a resolution of the Organization of American States, the two countries agreed in July 1957 on the procedure to be followed for submitting the dispute on this matter to the Court. In the Application by which the case was brought before the Court on 1 July 1958, Honduras claimed that failure by Nicaragua to give effect to the arbitral award constituted a breach of an international obligation and asked the Court to declare that Nicaragua was under an obligation to give effect to the award. After considering the evidence produced, the Court found that Nicaragua had in fact freely accepted the designation of the King of Spain as arbitrator, had fully participated in the arbitral proceedings, and had thereafter accepted the award. Consequently the Court found in its Judgment delivered on 18 November 1960 that the award was binding and that Nicaragua was under an obligation to give effect to it.

1.31. *Barcelona Traction, Light and Power Company, Limited* *(Belgium v. Spain)*

On 23 September 1958, Belgium instituted proceedings against Spain in connection with the adjudication in bankruptcy in Spain, in 1948, of the above-named company, formed in Toronto in 1911. The Application stated that the company's share-capital belonged largely to Belgian nationals and claimed that the acts of organs of the Spanish State whereby the company had been declared bankrupt and liquidated were contrary to international law and that Spain, as responsible for the resultant damage, was under an obligation either to restore or to pay compensation for the liquidated assets. In May 1960, Spain filed preliminary objections to the jurisdiction of the Court, but before the time-limit fixed for its observations and submissions thereon Belgium informed the Court that it did not intend to go on with the proceedings. Accordingly, the case was removed from the List by an Order of 10 April 1961.

1.32. *Barcelona Traction, Light and Power Company, Limited* *(New Application: 1962) (Belgium v. Spain)*

Belgium had ceased pursuing the aforementioned case (see No. 1.31 above) on account of efforts to negotiate a friendly settlement. The negotiations broke down, however, and Belgium filed a new Application on 19 June 1962. The following March, Spain filed four preliminary objections to the Court's jurisdiction, and on 24 July 1964 the Court delivered a Judgment dismissing the first two but joining the others to the merits. After the filing, within the time-limits requested by the Parties, of the pleadings on the merits and on the objections joined thereto, hearings were held from 15 April to 22 July 1969. Belgium sought compensation for the damage claimed to have been caused to its nationals, shareholders in the Barcelona Traction, Light and Power Company, Ltd., as the result of acts contrary to international law said to have been committed by organs of the Spanish State. Spain, on the other hand, submitted that the Belgian claim should be declared inadmissible or unfounded. In a Judgment delivered on 5 February 1970, the Court found that Belgium had no legal standing to exercise diplomatic protection of shareholders in a Canadian company in respect of measures taken against that company in Spain. It also pointed out that the adoption of the theory of diplomatic protection of shareholders as such would open the door to competing claims on the part of different States, which could create an atmosphere of insecurity in international economic relations. Accordingly, and in so far as the company's national State (Canada) was able to act, the Court was not of the opinion that *jus standi* was conferred on the Belgian Government by considerations of equity. The Court accordingly rejected Belgium's claim.

1.33 *Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient (France v. Lebanon)*

This case arose out of certain measures adopted by the Lebanese Government with regard to two French companies. France instituted proceedings against Lebanon because it considered these measures contrary to certain undertakings embodied in a Franco-Lebanese agreement of 1948. Lebanon raised preliminary objections to the Court's jurisdiction, but before hearings could be held the Parties informed the Court that satisfactory arrangements had been concluded. Accordingly, the case was removed from the List by an Order of 31 August 1960.

1.34 *Temple of Preah Vihear (Cambodia v. Thailand)*

Cambodia complained that Thailand had occupied a piece of its territory surrounding the ruins of the Temple of Preah Vihear, a place of pilgrimage and worship for Cambodians, and asked the Court to declare that territorial sovereignty over the Temple belonged to it and that Thailand was under an obligation to withdraw the armed detachment stationed there since 1954. Thailand filed preliminary objections to the Court's jurisdiction, which were rejected in a Judgment given on 26 May 1961. In its Judgment on the merits, rendered on 15 June 1962, the Court noted that a Franco-Siamese Treaty of 1904 provided that, in the area under consideration, the frontier was to follow the watershed line, and that a map based on the work of a Mixed Delimitation Commission showed the Temple on the Cambodian side of the boundary. Thailand asserted various arguments aimed at showing that the map had no binding character. One of its contentions was that the map had never been accepted by Thailand or, alternatively, that if Thailand had accepted it, it had done so only because of a mistaken belief that the frontier indicated corresponded to the watershed line. The Court found that Thailand had indeed accepted the map and concluded that the Temple was situated on Cambodian territory. It also held that Thailand was under an obligation to withdraw any military or police force stationed there and to restore to Cambodia any objects removed from the ruins since 1954.

See also No. 1.125. ***Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the*** Temple of Preah Vihear (Cambodia v. Thailand) ***(Cambodia v. Thailand)*** below.

1.35-1.36 *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*

On 4 November 1960, Ethiopia and Liberia, as former States Members of the League of Nations, instituted separate proceedings against South Africa in a case concerning the continued existence of the League of Nations Mandate for South

West Africa (see below, Advisory Cases, Nos. 2.5-2.8) and the duties and performance of South Africa as mandatory Power. The Court was requested to make declarations to the effect that South West Africa remained a territory under a Mandate, that South Africa had been in breach of its obligations under that Mandate, and that the Mandate and hence the mandatory authority were subject to the supervision of the United Nations. On 20 May 1961, the Court made an Order finding Ethiopia and Liberia to be in the same interest and joining the proceedings each had instituted. South Africa filed four preliminary objections to the Court's jurisdiction. In a Judgment of 21 December 1962, the Court rejected these and upheld its jurisdiction. After pleadings on the merits had been filed within the time-limits fixed at the request of the Parties, the Court held public sittings from 15 March to 29 November 1965 in order to hear oral arguments and testimony, and judgment in the second phase was given on 18 July 1966. By the casting vote of the President — the votes having been equally divided (7-7) — the Court found that Ethiopia and Liberia could not be considered to have established any legal right or interest appertaining to them in the subject-matter of their claims, and accordingly decided to reject those claims.

1.37. Northern Cameroons (Cameroon v. United Kingdom)

The Republic of Cameroon claimed that the United Kingdom had violated the Trusteeship Agreement for the Territory of the Cameroons under British administration (divided into the Northern and the Southern Cameroons) by creating such conditions that the Trusteeship had led to the attachment of the Northern Cameroons to Nigeria instead of to the Republic of Cameroon, the territory of which had previously been administered by France and to which the Southern Cameroons had been attached. The United Kingdom raised preliminary objections to the Court's jurisdiction. The Court found that to adjudicate on the merits would be devoid of purpose since, as the Republic of Cameroon had recognized, its judgment thereon could not affect the decision of the General Assembly providing for the attachment of the Northern Cameroons to Nigeria in accordance with the results of a plebiscite supervised by the United Nations. Accordingly, by a Judgment of 2 December 1963, the Court found that it could not adjudicate upon the merits of the claim.

1.38-1.39. North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)

These cases concerned the delimitation of the continental shelf of the North Sea as between Denmark and the Federal Republic of Germany, and as between the Netherlands and the Federal Republic, and were submitted to the Court by Special Agreement. The Parties asked the Court to state the principles and rules of international law applicable, and undertook thereafter to carry out the delimitations on that basis. By an Order of 26 April 1968 the Court, having found Denmark and the Netherlands to be in the same interest, joined the proceedings in the two cases. In its Judgment, delivered on 20 February 1969, the Court found that the boundary lines in question were to be drawn by agreement between the Parties and in accordance with equitable principles in such a way as to leave to each Party those areas of the continental shelf which constituted the natural prolongation of its land territory under the sea, and it indicated certain factors to be taken into consideration for that purpose. The Court rejected the contention that the delimitations in question had to be carried out in accordance with the principle of equidistance as defined in the 1958 Geneva Convention on the Continental Shelf. The Court took account of the fact that the Federal Republic had not ratified that Convention, and held that the equidistance principle was not inherent in the basic concept of continental shelf rights, and that this principle was not a rule of customary international law.

1.40 *Appeal relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*

In February 1971, following an incident involving the diversion to Pakistan of an Indian aircraft, India suspended overflights of its territory by Pakistan civil aircraft. Pakistan took the view that this action was in breach of the 1944 Convention on International Civil Aviation and the International Air Services Transit Agreement and complained to the Council of the International Civil Aviation Organization. India raised preliminary objections to the jurisdiction of the Council, but these were rejected and India appealed to the Court. During the written and oral proceedings, Pakistan contended, *inter alia*, that the Court was not competent to hear the appeal. In its Judgment of 18 August 1972, the Court found that it was competent to hear the appeal of India. It further decided that the ICAO Council was competent to deal with both the Application and the Complaint of which it had been seised by Pakistan, and accordingly dismissed the appeal laid before it by the Government of India.

1.41-1.42. *Fisheries Jurisdiction (United Kingdom v. Iceland; Federal Republic of Germany v. Iceland)*

On 14 April and 5 June 1972, respectively, the United Kingdom and the Federal Republic of Germany instituted proceedings against Iceland concerning a dispute over the proposed extension by Iceland, as from 1 September 1972, of the limits of its exclusive fisheries jurisdiction from a distance of 12 to a distance of 50 nautical miles. Iceland declared that the Court lacked jurisdiction, and declined to be represented in the proceedings or file pleadings. At the request of the United Kingdom and the Federal Republic, the Court in 1972 indicated, and in 1973 confirmed, provisional measures to the effect that Iceland should refrain from implementing, with respect to their vessels, the new regulations regarding the extension of the zone of its exclusive fishing rights, and that the annual catch of those vessels in the disputed area should be limited to certain maxima. In Judgments delivered on 2 February 1973, the Court found that it possessed jurisdiction; and in Judgments on the merits of 25 July 1974, it found that the Icelandic regulations constituting a unilateral extension of exclusive fishing rights to a limit of 50 nautical miles were not opposable to either the United Kingdom or the Federal Republic, that Iceland was not entitled unilaterally to exclude their fishing vessels from the disputed area, and that the Parties were under mutual obligations to undertake negotiations in good faith for the equitable solution of their differences.

1.43-1.44. Nuclear Tests
(Australia v. France; New Zealand v. France)

On 9 May 1973, Australia and New Zealand each instituted proceedings against France concerning tests of nuclear weapons which France proposed to carry out in the atmosphere in the South Pacific region. France stated that it considered the Court manifestly to lack jurisdiction and refrained from appearing at the public hearings or filing any pleadings. By two Orders of 22 June 1973, the Court, at the request of Australia and New Zealand, indicated provisional measures to the effect, *inter alia*, that pending judgment France should avoid nuclear tests causing radioactive fall-out on Australian or New Zealand territory. By two Judgments delivered on 20 December 1974, the Court found that the Applications of Australia and New Zealand no longer had any object and that it was therefore not called upon to give any decision thereon. In so doing the Court based itself on the conclusion that the objective of Australia and New Zealand had been achieved inasmuch as France, in various public statements, had announced its intention of carrying out no further atmospheric nuclear tests on the completion of the 1974 series.

1.45. Trial of Pakistani Prisoners of War (Pakistan v. India)

In May 1973, Pakistan instituted proceedings against India concerning 195 Pakistani prisoners of war whom, according to Pakistan, India proposed to hand over to Bangladesh, which was said to intend trying them for acts of genocide and crimes against humanity. India stated that there was no legal basis for the Court's jurisdiction in the matter and that Pakistan's Application was without legal effect. Pakistan having also filed a request for the indication of provisional measures, the Court held public sittings to hear observations on this subject; India was not represented at the hearings. In July 1973, Pakistan asked the Court to postpone further consideration of its request in order to facilitate the negotiations which were due to begin. Before any written pleadings had been filed, Pakistan informed the Court that negotiations had taken place, and requested the Court to record discontinuance of the proceedings. Accordingly, the case was removed from the List by an Order of 15 December 1973.

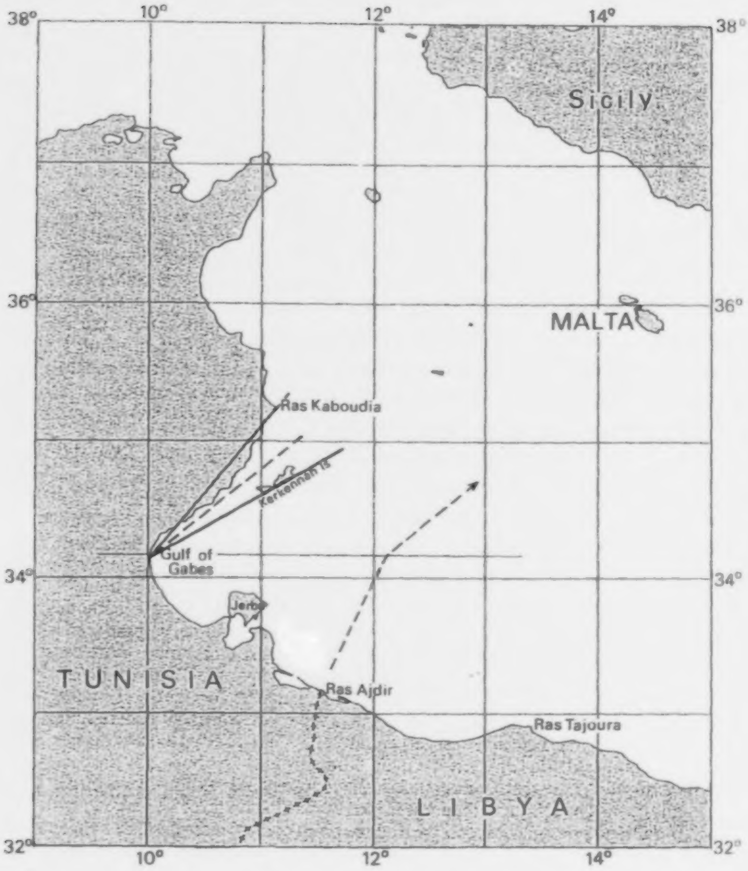
1.46. Aegean Sea Continental Shelf (Greece v. Turkey)

On 10 August 1976, Greece instituted proceedings against Turkey in a dispute over the Aegean Sea continental shelf. It asked the Court in particular to declare that the Greek islands in the area were entitled to their lawful portion of continental shelf and to delimit the respective parts of that shelf appertaining to Greece and Turkey. At the same time, it requested provisional measures indicating that, pending the Court's judgment, neither State should, without the other's consent, engage in exploration or research with respect to the shelf in question. On 11 September 1976, the Court found that the indication of such measures was not required and, as Turkey had denied that the Court was competent, ordered that the proceedings should first concern the question of jurisdiction. In a Judgment delivered on 19 December 1978, the Court found that jurisdiction to deal with the case was not conferred upon it by either of the two instruments relied upon by Greece: the application of the General Act for Pacific Settlement of International Disputes (Geneva, 1928) — whether or not it was in force — was excluded by the effect of a reservation made by Greece upon accession, while the Greco-Turkish press communiqué of 31 May 1975 did not contain an agreement binding upon either State to accept the unilateral referral of the dispute to the Court.

147. *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*

By a Special Agreement notified to the Court in 1978, it was asked to determine what principles and rules of international law were applicable to the delimitation as between Tunisia and the Libyan Arab Jamahiriya of the respective areas of continental shelf appertaining to each. After considering arguments as well as evidence based on geology, physiography and bathymetry on the basis of which each party sought to support its claims to particular areas of the sea-bed as the natural prolongation of its land territory, the Court concluded, in a Judgment of 24 February 1982, that the two countries abutted on a common continental shelf and that physical criteria were therefore of no assistance for the purpose of delimitation. Hence it had to be guided by "equitable principles" (as to which it emphasized that this term cannot be interpreted in the abstract, but only as referring to the principles and rules which may be appropriate in order to achieve an equitable result) and by certain factors such as the necessity of ensuring a reasonable degree of proportionality between the areas allotted and the lengths of the coastlines concerned.

The Court found that the application of the equidistance method could not, in the particular circumstances of the case, lead to an equitable result. With respect to the course to be taken by the delimitation line, it distinguished two sectors: near the shore, it considered, having taken note of some evidence of historical agreement as to the maritime boundary, that the delimitation (beginning at the boundary point of Ras Adjir) should run in a north-easterly direction at an angle of approximately 26°; further seawards, it considered that the line of delimitation should veer eastwards at a bearing of 52° to take into account the change of direction of the Tunisian coast to the north of the Gulf of Gabes and the existence of the Kerkennah Islands, to which a "half-effect" was attributed (see map on p. 126).


38°
10°
12°
14°
38°
Sicily
36°
MALTA
36°
Ras Kaboudia
Kerkennah Is
Gulf of
Gabes
34°
34°
Jerba
TUNISIA
Ras Ajdir
Ras Tajoura
LIBYA
32°
10°
12°
14°
32°

Purely illustrative map reflecting the approach adopted by the Court for the purpose of drawing the delimitation line

Continental Shelf (Tunisia/Libyan Arab Jamahiriya)

During the course of the proceedings, Malta requested permission to intervene, claiming an interest of a legal nature under Article 62 of the Court's Statute. In view of the very character of the intervention for which permission was sought, the Court considered that the interest of a legal nature which Malta had invoked could not be affected by the decision in the case and that the request was not one to which, under Article 62, the Court might accede. It therefore rejected it.

148. *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*

The case was brought before the Court by Application by the United States following the occupation of its Embassy in Tehran by Iranian militants on 4 November 1979, and the capture and holding as hostages of its diplomatic and consular staff. On a request by the United States for the indication of provisional measures, the Court held that there was no more fundamental prerequisite for relations between States than the inviolability of diplomatic envoys and embassies, and it indicated provisional measures for ensuring the immediate restoration to the United States of the Embassy premises and the release of the hostages. In its decision on the merits of the case, at a time when the situation complained of still persisted, the Court, in its Judgment of 24 May 1980, found that Iran had violated and was still violating obligations owed by it to the United States under conventions in force between the two countries and rules of general international law, that the violation of these obligations engaged its responsibility, and that the Iranian Government was bound to secure the immediate release of the hostages, to restore the Embassy premises, and to make reparation for the injury caused to the United States Government. The Court reaffirmed the cardinal importance of the principles of international law governing diplomatic and consular relations. It pointed out that while, during the events of 4 November 1979, the conduct of militants could not be directly attributed to the Iranian State — for lack of sufficient information — that State had however done nothing to prevent the attack, stop it before it reached its completion or oblige the militants to withdraw from the premises and release the hostages. The Court noted that, after 4 November 1979, certain organs of the Iranian State had endorsed the acts complained of and decided to perpetuate them, so that those acts were transformed into acts of the Iranian State. The Court gave judgment, notwithstanding the absence of the Iranian Government and after rejecting the reasons put forward by Iran in two communications addressed to the Court in support of its assertion that the Court could not and should not entertain the case. The Court was not called upon to deliver a further judgment on the reparation for the injury caused to the United States Government since, by Order of 12 May 1981, the case was removed from the List following discontinuance.

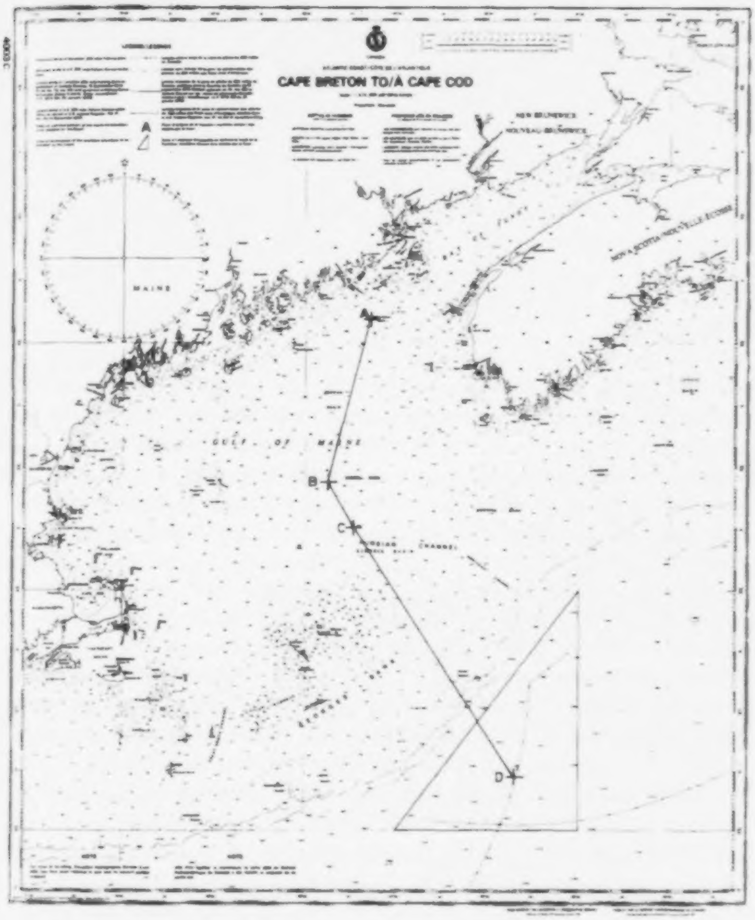
149. *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*

On 25 November 1981, Canada and the United States notified to the Court a Special Agreement whereby they referred to a Chamber of the Court the question of the delimitation of the maritime boundary dividing the continental shelf and fisheries zones of the two Parties in the Gulf of Maine area. This Chamber was constituted by an Order of 20 January 1982, and it was the first time that a case had been heard by an *ad hoc* Chamber of the Court.

The Chamber delivered its Judgment on 12 October 1984. Having established its jurisdiction and defined the area to be delimited, it reviewed the origin and development of the dispute and laid down the principles and rules of international law governing the issue. It indicated that the delimitation was to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographical configuration of the area and the other relevant circumstances, an equitable result. It rejected the delimitation lines proposed by the Parties, and defined the criteria and methods which it considered to be applicable to the single delimitation line which it was asked to draw. It applied criteria of a primarily geographical nature, and used geometrical methods appropriate both for the delimitation of the sea-bed and for that of the superjacent waters. As for the plotting of the delimitation line, the Chamber distinguished between three segments, the first two lying within the Gulf of Maine and the third outside it. In the case of the first segment, it considered that there was no special circumstance precluding the division into equal parts of the overlapping of the maritime projections of the two States' coasts. The delimitation line runs from the starting-point agreed between the Parties, and is the bisector of the angle formed by the perpendicular to the coastal line running from Cape Elizabeth to the existing boundary terminus and the perpendicular to the coastal line running from that boundary terminus to Cape Sable. For the second segment, the Chamber considered that, in view of the quasi-parallelism between the coasts of Nova Scotia and Massachusetts, a median line should be drawn approximately parallel to the two opposite coasts, and should then be corrected to take account of *(a)* the difference in length between the coasts of the two States abutting on the delimitation area and *(b)* the presence of Seal Island off the coast of Nova Scotia. The delimitation line corresponds to the corrected median line from its intersection with the above-mentioned bisector to the point where it reaches the closing line of the Gulf. The third segment is situated in the open ocean, and consists of a perpendicular to the closing line of the Gulf from the point at which the corrected median line intersects with that line. The terminus of this final segment lies within the triangle defined by the Parties and coincides with the last point of overlapping of the respective 200-mile zones claimed by the two States (see map, p. 129). The co-ordinates of the line drawn by the Chamber are given in the operative part of the Judgment.

1.50. Continental Shelf (Libyan Arab Jamahiriya/Malta)

This case, which was submitted to the Court in 1982 by Special Agreement between Libya and Malta, related to the delimitation of the areas of continental


CAPE BRETON TO/À CAPE COD
NEW BRUNSWICK
NOUVEAU-BRUNSWICK
NOVA SCOTIA / NOUVELLE-ÉCOSSE
MAINE
GULF OF MAINE
CHANNEL
B
C
D

Delimitation line drawn by the Chamber

Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America) shelf appertaining to each of these two States. In support of its argument, Libya relied on the principle of natural prolongation and the concept of proportionality. Malta maintained that States' rights over areas of continental shelf were now governed by the concept of distance from the coast, which was held to confer a primacy on the equidistance method of defining boundaries between areas of continental shelf, particularly when these appertained to States lying directly opposite each other, as in the case of Malta and Libya. The Court found that, in view of developments in the law relating to the rights of States over areas of continental shelf, there was no reason to assign a role to geographical or geophysical factors when the distance between the two States was less than 400 miles (as in the instant case). It also considered that the equidistance method did not have to be used and was not the only appropriate delimitation technique. The Court defined a number of equitable principles and applied them in its Judgment of 3 June 1985, in the light of the relevant circumstances. It took account of the main features of the coasts, the difference in their lengths and the distance between them. It took care to avoid any excessive disproportion between the continental shelf appertaining to a State and the length of its coastline, and adopted the solution of a median line transposed northwards over a certain distance. In the course of the proceedings, Italy applied for permission to intervene, claiming that it had an interest of a legal nature under Article 62 of the Statute. The Court found that the intervention requested by Italy fell, by virtue of its object, into a category which — on Italy's own showing — was one which could not be accepted, and the Application was accordingly refused.

1.51. Frontier Dispute (Burkina Faso/Republic of Mali)

On 14 October 1983 Burkina Faso (then known as Upper Volta) and Mali notified to the Court a Special Agreement referring to a Chamber of the Court the question of the delimitation of part of the land frontier between the two States. This Chamber was constituted by an Order of 3 April 1985. Following grave incidents between the armed forces of the two countries at the very end of 1985, both Parties submitted parallel requests to the Chamber for the indication of interim measures of protection. The Chamber indicated such measures by an Order of 10 January 1986.

In its Judgment delivered on 22 December 1986, the Chamber began by ascertaining the source of the rights claimed by the Parties. It noted that, in that case, the principles that ought to be applied were the principle of the intangibility of frontiers inherited from colonization and the principle of *uti possidetis juris*, which accords pre-eminence to legal title over effective possession as a basis of sovereignty, and whose primary aim is to secure respect for the territorial boundaries which existed at the time when independence was achieved. The Chamber specified that, when those boundaries were no more than delimitations between different administrative divisions or colonies all subject to the same sovereign, the application of the principle of *uti possidetis juris* resulted in their being transformed into international frontiers, as in the instant case.

It also indicated that it would have regard to equity *infra legem*, that is, that form of equity which constitutes a method of interpretation of the law and which is based on law. The Parties also relied upon various types of evidence to give support to their arguments, including French legislative and regulative texts or administrative documents, maps and "colonial *effectivités*" or, in other words, the conduct of the administrative authorities as proof of the effective exercise of territorial jurisdiction in the region during the colonial period. Having considered those various kinds of evidence, the Chamber defined the course of the boundary between the Parties in the disputed area. The Chamber likewise took the opportunity to point out, with respect to the tripoint Niger-Mali-Burkina Faso, that its jurisdiction was not restricted simply because the endpoint of the frontier lay on the frontier of a third State not a party to the proceedings. It further pointed out that the rights of Niger were in any event safeguarded by the operation of Article 59 of the Statute of the Court.

1.52 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*

On 9 April 1984 Nicaragua filed an Application instituting proceedings against the United States of America, together with a request for the indication of provisional measures concerning a dispute relating to responsibility for military and paramilitary activities in and against Nicaragua. On 10 May 1984 the Court made an Order indicating provisional measures. One of these measures required the United States immediately to cease and refrain from any action restricting access to Nicaraguan ports, and, in particular, the laying of mines. The Court also indicated that the right to sovereignty and to political independence possessed by Nicaragua, like any other State, should be fully respected and should not be jeopardized by activities contrary to the principle prohibiting the threat or use of force and to the principle of non-intervention in matters within the domestic jurisdiction of a State. The Court also decided in the aforementioned Order that the proceedings would first be addressed to the questions of the jurisdiction of the Court and of the admissibility of the Nicaraguan Application. Just before the closure of the written proceedings in this phase, El Salvador filed a declaration of intervention in the case under Article 63 of the Statute, requesting permission to claim that the Court lacked jurisdiction to entertain Nicaragua's Application. In its Order dated 4 October 1984, the Court decided that El Salvador's declaration of intervention was inadmissible inasmuch as it related to the jurisdictional phase of the proceedings.

After hearing argument from both Parties in the course of public hearings held from 8 to 18 October 1984, on 26 November 1984 the Court delivered a Judgment stating that it possessed jurisdiction to deal with the case and that Nicaragua's Application was admissible. In particular, it held that the Nicaraguan declaration of 1929 was valid and that Nicaragua was therefore entitled to invoke the United States declaration of 1946 as a basis of the Court's jurisdiction (Article 36, paragraphs 2 and 5, of the Statute). The subsequent proceedings took place in the absence of the United States, which announced on 18 January 1985 that it "intends not to participate in any further proceedings in connection with this case". From 12 to 20 September 1985, the Court heard oral argument by Nicaragua and the testimony of the five witnesses it had called. On 27 June 1986, the Court delivered its Judgment on the merits. The findings included a rejection of the justification of collective self-defence advanced by the United States concerning the military or paramilitary activities in or against Nicaragua, and a statement that the United States had violated the obligations imposed by customary international law not to intervene in the affairs of another State, not to use force against another State, not to infringe the sovereignty of another State, and not to interrupt peaceful maritime commerce. The Court also found that the United States had violated certain obligations arising from a bilateral Treaty of Friendship, Commerce and Navigation of 1956, and that it had committed acts such to deprive that treaty of its object and purpose.

It decided that the United States was under a duty immediately to cease and to refrain from all acts constituting breaches of its legal obligations, and that it must make reparation for all injury caused to Nicaragua by the breaches of obligations under customary international law and the 1956 Treaty, the amount of that reparation to be fixed in subsequent proceedings if the Parties were unable to reach agreement. The Court subsequently fixed, by an Order, time-limits for the filing of written pleadings by the Parties on the matter of the form and amount of reparation, and the Memorial of Nicaragua was filed on 29 March 1988, while the United States maintained its refusal to take part in the case. In September 1991, Nicaragua informed the Court, *inter alia*, that it did not wish to continue the proceedings. The United States told the Court that it welcomed the discontinuance and, by an Order of the President dated 26 September 1991, the case was removed from the Court's List.

1.53. Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)
(Tunisia v. Libyan Arab Jamahiriya)

This application was submitted to the Court by Tunisia, which took the view that the 1982 Judgment (see No. 1.47 above) gave rise to certain problems of implementation. Although the Court had already had to deal with several requests for interpretation, this was the first time an application for revision had come before it. The Statute of the Court states that a judgment may only be revised if there has been a discovery of some fact of such a nature as to be a decisive factor

Libya opposed Tunisia's twofold application, denying that there had been any problems of implementation of the kind invoked by Tunisia, and arguing that Tunisia's request for interpretation was merely an application for revision, in another guise.

In its Judgment of 10 December 1985, rendered unanimously, the Court rejected the application for revision as inadmissible. It found admissible the request for interpretation of the Judgment of 24 February 1982 so far as it related to the first sector of the delimitation laid down by that Judgment, stated the interpretation which should be made in that respect, and found that the submission of Tunisia relating to that sector could not be upheld; it found moreover that the request made by Tunisia for the correction of an error was without object, and that there was no call for it to give a decision thereon. The Court also found admissible the request for interpretation of the Judgment of 24 February 1982 so far as it related to the most westerly point of the Gulf of Gabes in the second sector of the delimitation laid down by that Judgment, stated the interpretation which should be made in that respect, and found that it could not uphold the submission made by Tunisia relating to that sector. In conclusion, the Court found that no cause had arisen for it to order an expert survey for the purpose of ascertaining the precise co-ordinates of the most westerly point of the Gulf of Gabes.

1.54-1.55. Border and Transborder Armed Actions (Nicaragua v. Costa Rica) (Nicaragua v. Honduras)

On the same day, 28 July 1986, Nicaragua instituted proceedings against Costa Rica and Honduras, respectively, alleging various violations of international law for which the two States bore legal responsibility, particularly on account of certain military activities directed against the Nicaraguan authorities by the *contras* operating from their territory.

In the former case, Nicaragua proceeded to file its Memorial on the merits on 10 August 1987. Subsequently, by a communication dated 12 August 1987, Nicaragua, referring to an agreement signed on 7 August 1987 at Guatemala City by the Presidents of the five States of Central America (the "Esquipulas II" Agreement), declared that it was discontinuing the judicial proceedings instituted against Costa Rica. Costa Rica did not object to the discontinuance, and the case was removed from the General List by an Order of the President dated 19 August 1987.

In the latter case, Honduras informed the Court that in its view the Court had no jurisdiction to deal with the case and, after a meeting with the President, the Parties agreed that the questions of jurisdiction and admissibility would be dealt with at a preliminary stage of the proceedings. Once the Parties had filed their written pleadings and taken part in hearings devoted to those questions, the Court delivered its Judgment in the case on 20 December 1988. Nicaragua had relied, as the basis of the jurisdiction of the Court, both on Article XXXI of the Inter-American Treaty for the Peaceful Settlement of Disputes (known as the "Pact of

Bogotá") of 1948 and on the declarations of acceptance of the compulsory jurisdiction of the Court made by the Parties under Article 36, paragraph 2, of the Statute. The Court found that the Pact of Bogotá conferred jurisdiction upon it. It dismissed the two arguments asserted successively by Honduras in that regard, namely that Article XXXI of the Pact had to be supplemented by a declaration of acceptance of compulsory jurisdiction or that it could be so supplemented but need not be. The Court found that the first argument was incompatible with the actual terms of Article XXXI. With regard to the second argument, the Court had to consider the divergent interpretations of Article XXXI that were proposed by the Parties, and set aside the interpretation of Honduras according to which, *inter alia*, effect should be given to the reservations to Honduras's acceptance of the jurisdiction of the Court that had been introduced into its declaration of 1986. On that point, the Court found that the commitment in Article XXXI of the Pact was independent of the declarations of acceptance of its jurisdiction.

The Court moreover rejected the four objections raised by Honduras to the admissibility of the Application, of which two had a general character and two were derived from the Pact of Bogotá. Subsequently, and after the proceedings on the merits had been initiated and Nicaragua had filed its Memorial, and after the Court, at the request of the Parties, had postponed the date for the fixing of the time-limit for the presentation of the Counter-Memorial of Honduras, the Agent of Nicaragua, in May 1992, informed the Court that the Parties had reached an out-of-court agreement and did not wish to go on with the proceedings. On 27 May 1992, the Court made an Order recording the discontinuance of the proceedings and directing the removal of the case from the General List.

1.56. Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)

On 11 December 1986, El Salvador and Honduras notified to the Court a Special Agreement whereby the Parties requested the Court to form a Chamber — consisting of three Members of the Court and two judges *ad hoc* — in order to (1) delimit the frontier line in the six sectors not delimited by the 1980 General Treaty of Peace concluded between the two States in 1980 and (2) determine the legal situation of the islands in the Gulf of Fonseca and the maritime spaces within and outside it. That Chamber was constituted by an Order of 8 May 1987. The time-limits for the written proceedings were fixed, but extended several times at the request of the Parties.

In November 1989, Nicaragua addressed to the Court an Application under Article 62 of the Statute for permission to intervene in the case, stating that, while it had no desire to intervene in the dispute concerning the land boundary, it wished to protect its rights in the Gulf of Fonseca (of which the three States are riparians), as well as "in order to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute". Nicaragua further maintained that its request for permission to intervene was a matter exclusively within the procedural mandate of the full Court. The Court, by an Order adopted on 28 February 1990, found that it was for the Chamber formed to deal with the case to decide whether the Application for permission to intervene should be granted. Having heard the Parties and Nicaragua at a series of public sittings, the Chamber delivered its Judgment on 13 September 1990. It found that Nicaragua had shown that it had an interest of a legal nature which might be affected by part of the Judgment of the Chamber on the merits, with regard to the legal régime of the waters of the Gulf of Fonseca.

The Chamber on the other hand decided that Nicaragua had not shown such an interest which might be affected by any decision it might be required to make concerning the delimitation of those waters, or any decision as to the legal situation of the maritime spaces outside the Gulf or any decision as to the legal situation of the islands in the Gulf. Within the framework thus defined, the Chamber decided that Nicaragua was entitled to intervene in the case. A written statement of Nicaragua and written observations on that statement by El Salvador and Honduras were subsequently filed with the Court. The oral arguments of the Parties and the oral observations of Nicaragua were heard at 50 public sittings, held between April and June 1991. The Chamber delivered its Judgment on 11 September 1992.

The Chamber began by noting the agreement of both Parties that the fundamental principle for determining the land area is the *uti possidetis juris*, i.e., the principle, generally accepted in Spanish America, that international boundaries follow former colonial administrative boundaries. The Chamber was, moreover, authorized to take into account, where pertinent, a provision of the 1980 Peace Treaty that a basis for delimitation is to be found in documents issued by the Spanish Crown or any other Spanish authority during the colonial period, and indicating the jurisdictions or limits of territories, as well as other evidence and arguments of a legal, historical, human or any other kind. Noting that the Parties had invoked the exercise of government powers in the disputed areas and of other forms of *effectivités*, the Chamber considered that it might have regard to evidence of action of this kind affording indications of the *uti possidetis juris* boundary. The Chamber then considered successively, from west to east, each of the six disputed sectors of the land boundary, to which some 152 pages were specifically devoted.

With regard to the legal situation of the islands in the Gulf, the Chamber considered that, although it had jurisdiction to determine the legal situation of all the islands, a judicial determination was required only for those in dispute, which it found to be El Tigre, Meanguera and Meanguerita. It rejected Honduras's claim that there was no real dispute as to El Tigre. Noting that in legal theory each island appertained to one of the Gulf States by succession from Spain, which precluded acquisition by occupation, the Chamber observed that effective possession by one of the States could constitute a post-colonial *effectivité* shedding light on the legal situation. Since Honduras had occupied El Tigre since 1849, the Chamber concluded that the conduct of the Parties accorded with the assumption that El Tigre appertained to it. The Chamber found Meanguerita, which is very small, uninhabited and contiguous to Meanguera, to be a "dependency" of Meanguera. It noted that El Salvador had claimed Meanguera in 1854 and that from the late nineteenth century the presence there of El Salvador had intensified, as substantial documentary evidence of the administration of Meanguera by El Salvador showed. A protest in 1991 by Honduras to El Salvador over Meanguera was considered too late to affect the presumption of acquiescence by Honduras. The Chamber thus found that Meanguera and Meanguerita appertained to El Salvador.

With respect to the maritime spaces within the Gulf, El Salvador claimed that they were subject to a condominium of the three coastal States and that delimitation would hence be inappropriate; Honduras argued that within the Gulf there was a community of interests necessitating a judicial delimitation. Applying the normal rules of treaty interpretation to the Special Agreement and the Peace Treaty, the Chamber found that it had no jurisdiction to effect a delimitation, whether inside or outside the Gulf. As for the legal situation of the waters of the Gulf, the Chamber noted that, given its characteristics, the Gulf was generally acknowledged to be a historic bay. The Chamber examined the history of the Gulf to discover its "régime", taking into account the 1917 Judgment of the Central American Court of Justice in a case between El Salvador and Nicaragua concerning the Gulf. In its Judgment, the Central American Court had found *inter alia* that the Gulf was a historic bay possessing the characteristics of a closed sea. Noting that the coastal States continued to claim the Gulf as a historic bay with the character of a closed sea, a position in which other nations acquiesced, the Chamber observed that its views on the régime of the historic waters of the Gulf coincided with those expressed in the 1917 Judgment. It found that the Gulf waters, other than the three-mile maritime belt, were historic waters and subject to the joint sovereignty of the three coastal States. It noted that there had been no attempt to divide the waters according to the principle of *uti possidetis juris*. A joint succession of the three States to the maritime area thus seemed to be the logical outcome of the *uti possidetis* principle. The Chamber accordingly found that Honduras had legal rights in the waters up to the bay closing line, which it considered also to be a baseline.

Regarding the waters outside the Gulf, the Chamber observed that entirely new concepts of law, unthought of when the Central American Court gave its Judgment in 1917, were involved, in particular those regarding the continental shelf and the exclusive economic zone, and found that, excluding a strip at either extremity corresponding to the maritime belts of El Salvador and Nicaragua, the three joint sovereigns were entitled, outside the closing line, to a territorial sea, continental shelf and exclusive economic zone, but must proceed to a division by mutual agreement. Lastly, as regards the effect of the Judgment on the intervening State, the Chamber found that it was not *res judicata* for Nicaragua.

137. *Elettronica Sicula S.p.A. (ELSI)*
(United States of America v. Italy)

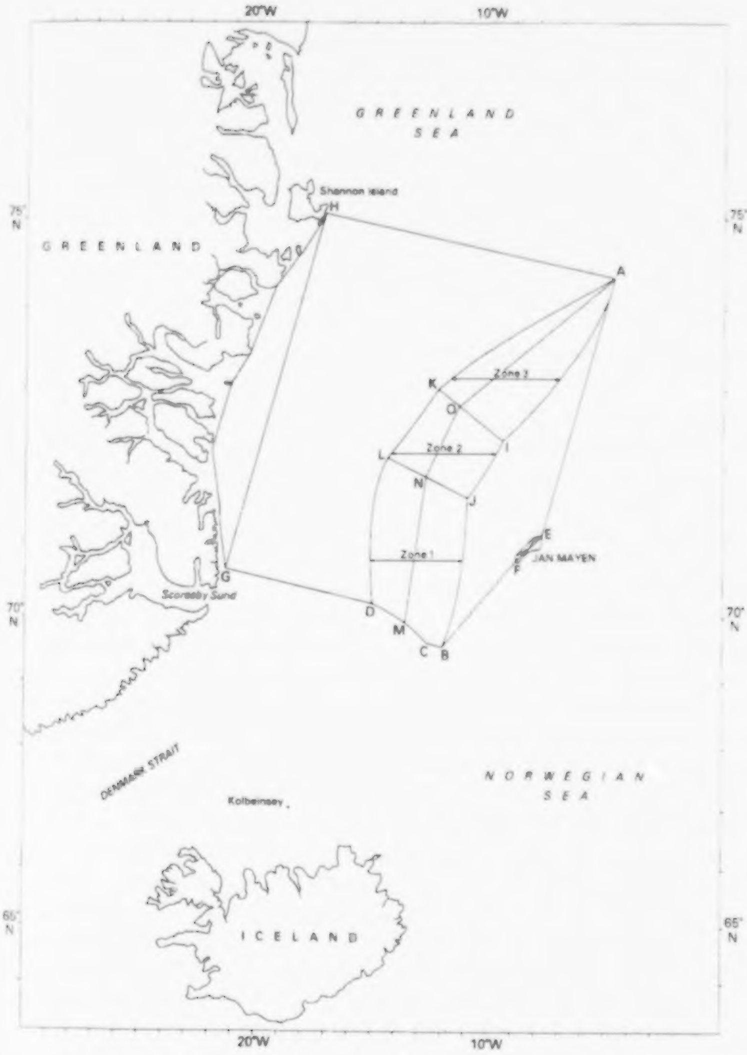
On 6 February 1987, the United States instituted proceedings against Italy in respect of a dispute arising out of the requisition by the Government of Italy of the plant and related assets of Raytheon-Elsi S.p.A., an Italian company producing electronic components and previously known as Elettronica Sicula S.p.A. (ELSI), which was stated to have been 100 per cent owned by two United States corporations. The Court, by an Order dated 2 March 1987, formed a Chamber of five judges to deal with the case, as requested by the Parties. Italy, in its Counter-Memorial, raised an objection to the admissibility of the Application on the grounds of a failure to exhaust local remedies, and the Parties agreed that that objection should "be heard and determined within the framework of the merits". On 20 July 1989, the Chamber delivered a Judgment in which it rejected the objection raised by Italy and said that the latter had not committed any of the breaches alleged by the United States of the bilateral Treaty of Friendship, Commerce and Navigation of 1948, or of the Agreement Supplementing that Treaty. The United States principally reproached the Respondent *(a)* with having effected an unlawful requisition of the ELSI plant, thus depriving the shareholders of their direct right to proceed to the liquidation of the company's assets under normal conditions; *(b)* with having been incapable of preventing the occupation of the plant by the employees; *(c)* with having failed to reach any decision as to the legality of the requisition during a period of sixteen months; and *(d)* with having intervened in the bankruptcy proceedings, with the result that it had purchased ELSI at a price well below its true market value. After a detailed consideration of the facts alleged and the relevant conventional provisions, the Chamber found that the Respondent had not breached the 1948 Treaty and the Agreement supplementing that Treaty in the manner claimed by the Applicant, and rejected the claim for reparation made by the United States.

138. *Maritime Delimitation in the Area between Greenland and Jan Mayen*
(Denmark v. Norway)

On 16 August 1988, the Government of Denmark filed in the Registry an Application instituting proceedings against Norway, by which it seised the Court of a dispute concerning the delimitation of Denmark's and Norway's fishing zones and continental shelf areas in the waters between the east coast of Greenland and the Norwegian island of Jan Mayen, where both Parties laid claim to an area of some 72,000 square kilometres. On 14 June 1993, the Court delivered its Judgment. Denmark had asked the Court to draw a single line of delimitation of those areas at a distance of 200 nautical miles measured from Greenland's baseline, or, if the Court did not find it possible to draw such a line, in accordance with international law. Norway, for its part, had asked the Court to find that the median line constituted the two lines of separation for the purpose of the delimitation of the two relevant areas, on the understanding that those lines would then coincide, but that the delimitations would remain conceptually distinct. A principal contention of Norway was that a delimitation had already been established between Jan Mayen and Greenland, by the effect of treaties in force between the Parties — a bilateral Agreement of 1965 and the 1958 Geneva Convention on the Continental Shelf — as both instruments provide for the drawing of a median line.

The Court noted, in the first place, that the 1965 Agreement covered areas different from the continental shelf between the two countries, and that that Agreement did not place on record any intention of the Parties to undertake to apply the median line for any of the subsequent delimitations of that continental shelf. The Court then found that the force of Norway's argument relating to the 1958 Convention depended in the circumstances of the case upon the existence of "special circumstances" as envisaged by the Convention. It subsequently rejected the argument of Norway according to which the Parties, by their "conjoint conduct" had long recognized the applicability of a median line delimitation in their mutual relations. The Court examined separately the two strands of the applicable law: the effect of Article 6 of the 1958 Convention, applicable to the delimitation of the continental shelf boundary, and then the effect of the customary law which governed the fishery zone. After examining the case law in this field and the provisions of the 1982 United Nations Convention on the Law of the Sea, the Court noted that the statement (in those provisions) of an "equitable solution" as the aim of any delimitation process reflected the requirements of customary law as regards the delimitation both of the continental shelf and of exclusive economic zones. It appeared to the Court that, both for the continental shelf and for the fishery zones in the instant case, it was proper to begin the process of delimitation by a median line provisionally drawn, and it then observed that it was called upon to examine every particular factor in the case which might suggest an adjustment or shifting of the median line provisionally drawn. The 1958 Convention required the investigation of any "special circumstances"; the customary law based upon equitable principles for its part required the investigation of the "relevant circumstances".

The Court found that, although it was a matter of categories which were different in origin and in name, there was inevitably a tendency towards assimilation between the two types of circumstances. The Court then turned to the question whether the circumstances of the instant case required adjustment or shifting of the median line. To that end it considered a number of factors. With regard to the disparity or disproportion between the lengths of the "relevant coasts", alleged by Denmark, the Court concluded that the striking difference in lengths of the relevant coasts constituted a special circumstance within the meaning of Article 6, paragraph 1, of the 1958 Convention. Similarly, as regards the fishery zones, the Court was of the opinion that the application of the median line led to manifestly


20°W
10°W
GREENLAND SEA
Shannon Island
H
75° N
GREENLAND
A
K
Zone 3
O
I
L
Zone 2
N
J
E
Zone 1
JAN MAYEN
F
G
Scoresby Sund
70° N
D
M
C
B
DENMARK STRAIT
Kolbeinsey
NORWEGIAN SEA
65° N
ICELAND

Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway) inequitable results. The Court concluded therefrom that the median line should be adjusted or shifted in such a way as to effect a delimitation closer to the coast of Jan Mayen.

The Court then considered certain circumstances that might also affect the position of the boundary line, i.e., access to resources, essentially fishery resources (capelin), particularly with regard to the presence of ice ; population and economy ; questions of security ; conduct of the Parties. Among those factors, the Court only retained the one relating to access to resources, considering that the median line was too far to the west for Denmark to be assured of equitable access to the capelin stock. It concluded that, for that reason also, the median line had to be adjusted or shifted eastwards. Lastly, the Court proceeded to define the single line of delimitation as being the line M-N-O-A marked on the sketch-map reproduced on page 139.

1.59. *Aerial Incident of 3 July 1988*
(Islamic Republic of Iran v. United States of America)

By an Application dated 17 May 1989, the Islamic Republic of Iran instituted proceedings before the Court against the United States of America, further to the destruction in the air by the *USS Vincennes*, a guided-missile cruiser of the United States armed forces operating in the Persian Gulf, of an Iran Air Airbus A-300B, causing the deaths of its 290 passengers and crew. According to the Government of the Islamic Republic of Iran, the United States, by its destruction of that aircraft occasioning fatal casualties, by refusing to compensate Iran for the damage caused and by its continuous interference in aviation in the Persian Gulf, had violated certain provisions of the 1944 Chicago Convention on International Civil Aviation and of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. The Islamic Republic of Iran likewise asserted that the Council of the International Civil Aviation Organization (ICAO) had erred in a decision of 17 March 1989 concerning the incident. Within the time-limit fixed for the filing of its Counter-Memorial, the United States of America raised preliminary objections to the jurisdiction of the Court.

Subsequently, by a letter dated 8 August 1994, the Agents of the two Parties jointly informed the Court that their Governments had "entered into negotiations that may lead to a full and final settlement of [the] case" and requested the Court "[to postpone] *sine die* the opening of the oral proceedings" on the preliminary objections, for which it had fixed the date of 12 September 1994. By a letter dated 22 February 1996 and filed in the Registry on the same day, the Agents of the two Parties jointly notified the Court that their Governments had agreed to discontinue the case because they had entered into "an agreement in full and final settlement". Accordingly, the President of the Court, also on 22 February 1996, made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's List.

160. Certain Phosphate Lands in Nauru (Nauru v. Australia)

On 19 May 1989 the Republic of Nauru filed in the Registry of the Court an Application instituting proceedings against the Commonwealth of Australia in respect of a dispute concerning the rehabilitation of certain phosphate lands mined under Australian administration before Nauruan independence. In its Application, Nauru claimed that Australia had breached the trusteeship obligations it had accepted under Article 76 of the Charter of the United Nations and under the Trusteeship Agreement for Nauru of 1 November 1947. Nauru further claimed that Australia had breached certain obligations towards Nauru under general international law, more particularly with regard to the implementation of the principle of self-determination and of permanent sovereignty over natural wealth and resources. Australia was said to have incurred an international legal responsibility and to be bound to make restitution or other appropriate reparation to Nauru for the damage and prejudice suffered. Within the time-limit fixed for the filing of its Counter-Memorial, Australia raised certain preliminary objections relating to the admissibility of the Application and the jurisdiction of the Court.

On 26 June 1992, the Court delivered its Judgment on those questions. With regard to the matter of its jurisdiction, the Court noted that Nauru based that jurisdiction on the declarations whereby Australia and Nauru had accepted the jurisdiction of the Court under Article 36, paragraph 2, of the Statute. The declaration of Australia specified that it did "not apply to any dispute in regard to which the Parties thereto have agreed or shall agree to have recourse to some other method of peaceful settlement". Referring to the Trusteeship Agreement of 1947 and relying upon the reservation contained in its declaration to assert that the Court lacked jurisdiction to deal with Nauru's Application, Australia argued that any dispute which arose in the course of the trusteeship between "the Administering Authority and the indigenous inhabitants" should be regarded as having been settled by the very fact of the termination of the trusteeship (provided that that termination had been unconditional) as well as by the effect of the Agreement relating to the Nauru Island Phosphate Industry of 1967, concluded between the Nauru Local Government Council, on the one hand, and Australia, New Zealand and the United Kingdom, on the other, whereby Nauru was said to have waived its claims to rehabilitation of the phosphate lands. As Australia and Nauru did not, after 31 January 1968, when Nauru acceded to independence, conclude any agreement whereby the two States undertook to settle their dispute relating to rehabilitation, the Court rejected that first preliminary objection of Australia. It likewise rejected the second, third, fourth and fifth objections raised by Australia.

The Court then considered the objection by Australia based on the fact that New Zealand and the United Kingdom were not parties to the proceedings. It noted that the three Governments mentioned in the Trusteeship Agreement constituted, in the very terms of that Agreement, "the Administering Authority" for Nauru; but this Authority did not have an international legal personality distinct from those of the States thus designated ; and that, of those States, Australia played a very special role, established, in particular, by the Trusteeship Agreement. The Court did not consider, to begin with, that any reason had been shown why a claim brought against only one of the three States should be declared inadmissible in *limine litis*, merely because that claim raised questions regarding the administration of the territory, which was shared with the two other States. It further considered, *inter alia*, that it was in no way precluded from adjudicating upon the claims submitted to it, provided the legal interests of the third State which might possibly be affected did not form the actual subject-matter of the decision requested. Where the Court was so entitled to act, the interests of the third State which was not a party to the case were protected by Article 59 of the Statute. The Court found that, in the instant case, the interests of New Zealand and the United Kingdom did not constitute the actual subject-matter of the Judgment to be rendered on the merits of Nauru's Application and that, consequently, it could not refuse to exercise its jurisdiction and that the objection argued on that point should be dismissed.

Lastly, the Court upheld the preliminary objection addressed by Australia to the claim by Nauru concerning the overseas assets of the British Phosphate Commissioners, according to which it was inadmissible on the ground that it was a completely new claim which appeared for the first time in the Memorial, and that the object of the dispute originally submitted to the Court would have been transformed if it had dealt with that request. A Counter-Memorial of Australia on the merits was subsequently filed and the Court fixed the dates for the filing of a Reply by the Applicant and a Rejoinder by the Respondent. However, before those two pleadings were filed, the two Parties, by a joint notification deposited on 9 September 1993, informed the Court that they had, in consequence of having reached a settlement, agreed to discontinue the proceedings. Accordingly, the case was removed from the General List by an Order of the Court of 13 September 1993.

1.61. Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)

On 23 August 1989, Guinea-Bissau instituted proceedings against Senegal, on the basis of the declarations made by both States under Article 36, paragraph 2, of the Statute. Guinea-Bissau explained that, notwithstanding the negotiations pursued from 1977 onwards, the two States had been unable to reach a settlement of a dispute concerning the maritime delimitation to be effected between them. Consequently they had jointly consented, by an Arbitration Agreement dated 12 March 1985, to submit that dispute to an Arbitration Tribunal composed of three members. Guinea-Bissau indicated that, according to the terms of Article 2 of that Agreement, the Tribunal had been asked to rule on the following twofold question :

> "1. Does the Agreement concluded by an exchange of letters [between France and Portugal] on 26 April 1960, and which relates to the maritime

> boundary, have the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal?
>
> 2. In the event of a negative answer to the first question, what is the course of the line delimiting the maritime territories appertaining to the Republic of Guinea-Bissau and the Republic of Senegal respectively?"

Guinea-Bissau added that it had been specified, in Article 9 of the Agreement, that the Tribunal would inform the two Governments of its decision regarding the questions set forth in Article 2, and that that decision should include the drawing of the frontier line on a map. According to the Application, the Tribunal communicated to the Parties on 31 July 1989 a "text that was supposed to serve as an award" but did not in fact amount to one. Guinea-Bissau asserted that the decision was inexistent as the majority of two arbitrators (against one) that had voted in favour of the text was no more than apparent given that one of the two arbitrators — in fact the President of the Tribunal — was said to have "expressed a view in contradiction with the one apparently adopted by the vote", in a declaration appended thereto. Subsidiarily, Guinea-Bissau maintained that the Award was null and void, as the Tribunal had failed, in various ways (see explanation below) to accomplish the task assigned to it by the Agreement. By an Order dated 12 February 1990, the Court dismissed a request for the indication of provisional measures presented by Guinea-Bissau.

It delivered its Judgment on 12 November 1991. The Court first considered its jurisdiction, and, in particular, found that Guinea-Bissau's declaration contained no reservation, but that the declaration of Senegal, which replaced a previous declaration of 3 May 1985, provided among other things that it was applicable only to "all legal disputes arising after the present declaration . . .". As the Parties agreed that only the dispute relating to the Award rendered by the Tribunal (which arose after the Senegalese declaration) was the subject of the proceedings before the Court and that it should not be seen as an appeal from the Award, or as an application for revision of it, the Court accordingly regarded its jurisdiction as established. It then rejected, *inter alia*, Senegal's contention that Guinea-Bissau's Application, or the arguments used in support of it, amounted to an abuse of process. With regard to Guinea-Bissau's contention that the Award was inexistent, the Court considered that the view expressed by the President of the Tribunal in his declaration constituted only an indication of what he considered would have been a better course. His position therefore could not be regarded as standing in contradiction with the position adopted by the Award. The Court accordingly dismissed the contention of Guinea-Bissau that the Award was inexistent for lack of a real majority.

The Court then examined the question of the nullity of the Award, as Guinea-Bissau had observed that the Tribunal had not replied to the second question put in Article 2 of the Arbitration Agreement and had not appended to the

Award the map provided for in Article 9 of that Agreement. According to Guinea-Bissau, those two omissions constituted an *excès de pouvoir*. It was further asserted that no reasons had been given by the Tribunal for its decision. With regard to the absence of a reply to the second question, the Court recognized that the structure of the Award was, in that respect, open to criticism, but concluded that the Award was not flawed by any failure to decide. The Court then observed that the Tribunal's statement of reasoning, while succinct, was clear and precise, and concluded that the second contention of Guinea-Bissau must also be dismissed. With regard to the validity of the reasoning adopted by the Tribunal on the issue of whether it was required to answer the second question, the Court recalled that an international tribunal normally had the right to decide as to its own jurisdiction and the power to interpret for that purpose the instruments which governed that jurisdiction. It observed that Guinea-Bissau was in fact criticizing the interpretation in the Award of the provisions of the Arbitration Agreement which determine the Tribunal's jurisdiction, and proposing another interpretation. Further to a detailed consideration of Article 2 of the Arbitration Agreement, it concluded that the Tribunal had not acted in manifest breach of its competence to determine its own jurisdiction by deciding that it was not required to answer the second question except in the event of a negative answer to the first. Then, with respect to the argument of Guinea-Bissau that the answer given by the Tribunal to the first question was a partially negative answer and that this sufficed to satisfy the prescribed condition for entering into the second question, the Court found that the answer given achieved a partial delimitation, and that the Tribunal had thus been able to find, without manifest breach of its competence, that its answer to the first question was not a negative one. The Court concluded that, in this respect also, the contention of Guinea-Bissau that the entire Award was a nullity must be rejected. It considered moreover that the absence of a map could not in this case constitute such an irregularity as would render the Award invalid.

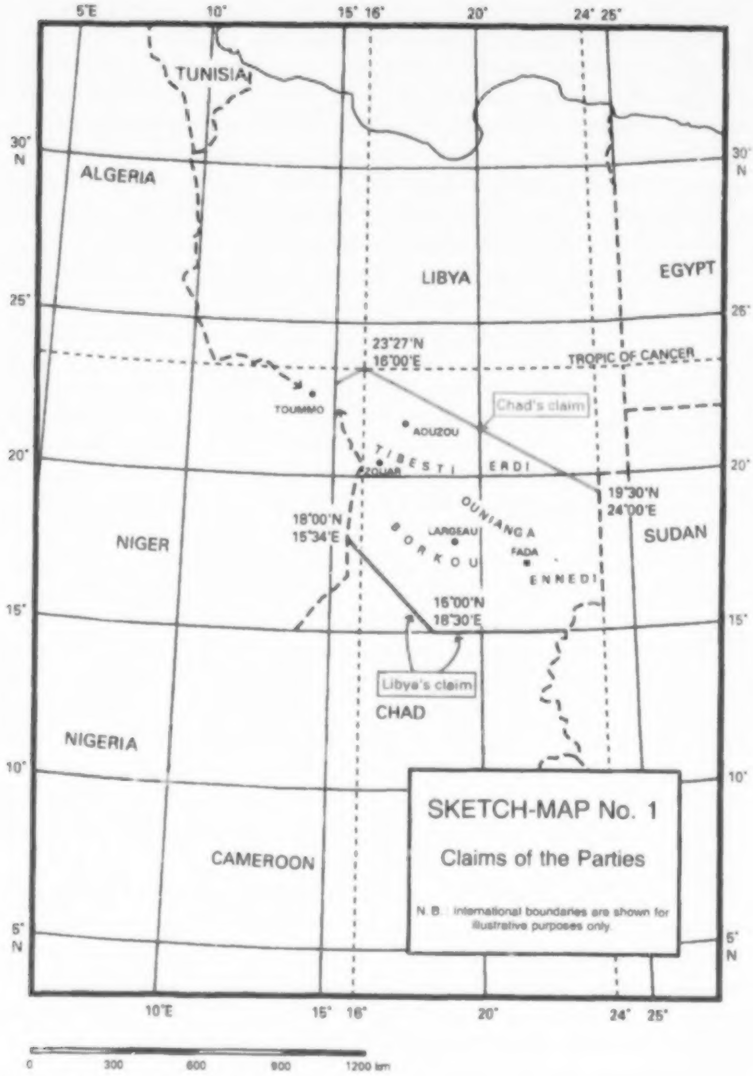
1.62 Territorial Dispute (Libyan Arab Jamahiriya/Chad)

On 31 August 1990, the Libyan Arab Jamahiriya filed in the Registry a notification of an Agreement that it had concluded with Chad in Algiers on 31 August 1989, in which it was agreed, *inter alia*, that in the absence of a political settlement of their territorial dispute, they undertook to submit that dispute to the Court. On 3 September 1990, Chad filed an Application instituting proceedings against the Libyan Arab Jamahiriya that was based upon the aforementioned Agreement and, subsidiarily, on the Franco-Libyan Treaty of Friendship and Good Neighbourliness of 10 August 1955. The Parties subsequently agreed that the proceedings had in fact been instituted by two successive notifications of the Special Agreement constituted by the Algiers Agreement. The written proceedings occasioned the filing, by each of the Parties, of a Memorial, a Counter-Memorial and a Reply, accompanied by voluminous annexes, and the oral proceedings were held in June and July 1993.

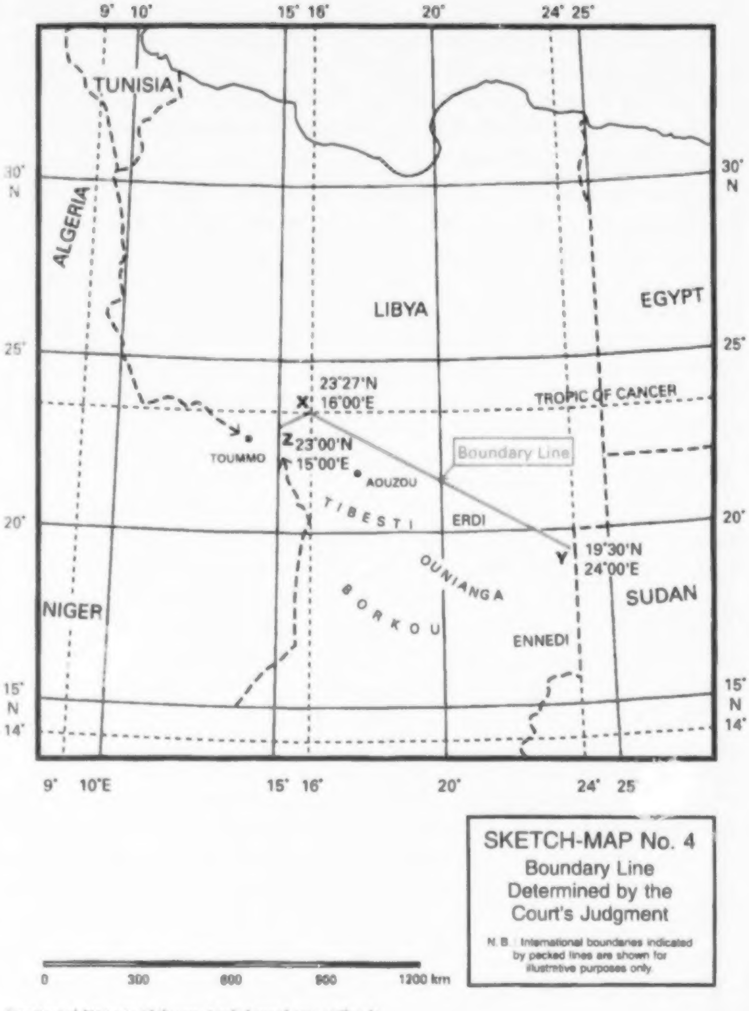
The Court delivered its Judgment on 3 February 1994. It began by observing that Libya considered that there was no existing boundary, and had asked the Court to determine one, while Chad considered that there was an existing boundary, and had asked the Court to declare what that boundary was. The Court then referred to the lines claimed by Chad and by Libya, as illustrated in sketch-map No. 1 reproduced in the Judgment (see below p. 146); Libya's claim was on the basis of a coalescence of rights and titles of the indigenous inhabitants, the Senoussi Order, the Ottoman Empire, Italy and Libya itself; while that of Chad was on the basis of a Treaty of Friendship and Good Neighbourliness concluded by France and Libya on 10 August 1955, or, alternatively, on French *effectivités*, either in relation to, or independently of, the provisions of earlier treaties.

The Court noted that it had been recognized by both Parties that the 1955 Treaty between France and Libya was the logical starting-point for consideration of the issues before the Court. Neither Party questioned the validity of the 1955 Treaty, nor did Libya question Chad's right to invoke against Libya any such provisions thereof as related to the frontiers of Chad. One of the matters specifically addressed was the question of frontiers, dealt with in Article 3 and Annex I. The Court pointed out that if the 1955 Treaty did result in a boundary, this furnished the answer to the issues raised by the Parties. Article 3 of the Treaty provided that France and Libya recognized that the frontiers between, *inter alia*, the territories of French Equatorial Africa and the territory of Libya were those that resulted from a number of international instruments in force on the date of the constitution of the United Kingdom of Libya and reproduced in Annex I to the Treaty. In the view of the Court, the terms of the Treaty signified that the Parties thereby recognized complete frontiers between their respective territories as resulting from the combined effect of all the instruments listed in Annex I. By entering into the Treaty, the Parties recognized the frontiers to which the text of the Treaty referred; the task of the Court was thus to determine the exact content of the undertaking entered into. The Court specified in that regard that there was nothing to prevent the Parties from deciding by mutual agreement to consider a certain line as a frontier, whatever the previous status of that line. If it was already a territorial boundary, it was confirmed purely and simply.

It was clear to the Court that — contrary to what was contended by the Libyan Arab Jamahiriya — the Parties had agreed to consider the instruments listed as being in force for the purpose of Article 3, since otherwise they would not have included them in the Annex. Having concluded that the Contracting Parties wished, by the 1955 Treaty, to define their common frontier, the Court considered what that frontier was. Accordingly it proceeded to a detailed study of the instruments relevant to the case, i.e., *(a)* to the east of the line of 16° longitude, the Anglo-French Declaration of 1899 — which defined a line limiting the French zone (or sphere of influence) to the north-east in the direction of Egypt and the Nile Valley, already under British control — and the Convention of 8 Septem-


SKETCH-MAP No. 1
Claims of the Parties
N. B. : International boundaries are shown for illustrative purposes only.
TUNISIA
ALGERIA
LIBYA
EGYPT
NIGER
NIGERIA
CHAD
SUDAN
CAMEROON
TROPIC OF CANCER
23°27'N 16°00'E
19°30'N 24°00'E
18°00'N 15°34'E
15°00'N 18°30'E
Chad's claim
Libya's claim
TOUMMO
AOUZOU
ZOUAR
TIBESTI
ERDI
OUNIANGA
LARGEAU
FADA
BORKOU
ENNEDI
5°E
10°
15° 16°
20°
24° 25°
30° N
25°
20°
15°
10°
5° N
10°E
0
300
600
900
1200 km

Territorial Dispute (Libyan Arab Jamahiriya/Chad)



SKETCH-MAP No. 4
Boundary Line
Determined by the
Court's Judgment

N.B.: International boundaries indicated by pecked lines are shown for illustrative purposes only.

9° 10°
15° 16°
20°
24° 25°
TUNISIA
ALGERIA
LIBYA
EGYPT
30° N
25°
20°
15° N
14°
TROPIC OF CANCER
X
23°27'N
16°00'E
Z
23°00'N
15°00'E
TOUMMO
AOUZOU
Boundary Line
TIBESTI
ERDI
Y
19°30'N
24°00'E
OUNIANGA
BORKOU
ENNEDI
NIGER
SUDAN
9° 10°E
15° 16°
20°
24° 25
0
300
600
900
1200 km

Territorial Dispute (Libyan Arab Jamahiriya/Chad) ber 1919 signed at Paris between Great Britain and France, which resolved the question of the location of the boundary of the French zone under the 1899 Declaration; *(b)* to the west of the line of 16° longitude, the Franco-Italian Agreement (Exchange of Letters) of 1 November 1902, which referred to the map annexed to the Declaration of 21 March 1899. The Court pointed out that that map could only be the map in the *Livre jaune* published by the French authorities in 1899 and which showed a dotted line indicating the frontier of Tripolitania.

The Court then described the line resulting from those relevant international instruments (see map on p. 147). Considering the attitudes adopted subsequently by the Parties with regard to their frontiers, it reached the conclusion that the existence of a determined frontier had been accepted and acted upon by the Parties. Lastly, referring to the provision of the 1955 Treaty according to which it had been concluded for a period of 20 years and could be terminated unilaterally, the Court indicated that that Treaty had to be taken to have determined a permanent frontier, and observed that, when a boundary has been the subject of agreement, its continued existence is not dependent upon the continuing life of the Treaty under which that boundary was agreed.

1.63. East Timor (Portugal v. Australia)

On 22 February 1991, Portugal filed an Application instituting proceedings against Australia concerning "certain activities of Australia with respect to East Timor", in relation to the conclusion, on 11 December 1989, of a treaty between Australia and Indonesia which created a Zone of Co-operation in a maritime area between "the Indonesian Province of East Timor and Northern Australia". According to the Application, Australia had by its conduct failed to observe the obligation to respect the duties and powers of Portugal as the Administering Power of East Timor and the right of the people of East Timor to self-determination. In consequence, according to the Application, Australia had incurred international responsibility vis-à-vis the people of both East Timor and Portugal. As the basis for the jurisdiction of the Court, the Application referred to the declarations by which the two States had accepted the compulsory jurisdiction of the Court under Article 36, paragraph 2, of its Statute. In its Counter-Memorial, Australia raised questions concerning the jurisdiction of the Court and the admissibility of the Application.

The Court delivered its Judgment on 30 June 1995. It began by considering Australia's objection that there was in reality no dispute between itself and Portugal. Australia contended that the case as presented by Portugal was artificially limited to the question of the lawfulness of Australia's conduct, and that the true respondent was Indonesia, not Australia, observing that Portugal and itself had accepted the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute, but that Indonesia had not. The Court found in that respect that there was a legal dispute between the two States. The Court then considered Australia's principal objection, to the effect that Portugal's Application would require the Court to determine the rights and obligations of Indonesia. Australia contended that the Court would not be able to act if, in order to do so, it were required to rule on the lawfulness of Indonesia's entry into and continuing presence in East Timor, on the validity of the 1989 Treaty between Australia and Indonesia, or on the rights and obligations of Indonesia under that Treaty, even if the Court did not have to determine its validity. In support of its argument, Australia referred to the Court's Judgment in the case concerning *Monetary Gold Removed from Rome in 1943* (see No. 1.12 above).

After having carefully considered the arguments advanced by Portugal which sought to separate Australia's behaviour from that of Indonesia, the Court concluded that Australia's behaviour could not be assessed without first entering into the question why it was that Indonesia could not lawfully have concluded the 1989 Treaty, while Portugal allegedly could have done so; the very subject-matter of the Court's decision would necessarily be a determination whether, having regard to the circumstances in which Indonesia entered and remained in East Timor, it could or could not have acquired the power to enter into treaties on behalf of East Timor relating to the resources of the continental shelf. The Court took the view that it could not make such a determination in the absence of the consent of Indonesia.

The Court then rejected Portugal's additional argument that the rights which Australia allegedly breached were rights *erga omnes* and that accordingly Portugal could require it, individually, to respect them. In the Court's view, Portugal's assertion that the right of peoples to self-determination had an *erga omnes* character, was irreproachable, and the principle of self-determination of peoples had been recognized by the Charter of the United Nations and in the jurisprudence of the Court, and was one of the essential principles of contemporary international law. However, the Court considered that the *erga omnes* character of a norm and the rule of consent to jurisdiction were two different things, and that it could not in any event rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of another State which was not a party to the case.

The Court then considered another argument of Portugal which rested on the premise that the United Nations resolutions, and in particular those of the Security Council, could be read as imposing an obligation on States not to recognize any authority on the part of Indonesia over East Timor and, where the latter is concerned, to deal only with Portugal. Portugal maintained that those resolutions would constitute "givens" on the content of which the Court would not have to decide *de novo*. The Court took note, in particular, of the fact that for the two Parties, the territory of East Timor remained a non-self-governing territory and its people had the right to self-determination, but considered that the resolutions could not be regarded as "givens" constituting a sufficient basis for determining the dispute between the Parties. It followed from all the foregoing considerations that the Court would necessarily first have to rule upon the lawfulness of Indonesia's conduct. Indonesia's rights and obligations would thus constitute the very subject-matter of such a judgment made in the absence of that State's consent, which would run directly counter to the principle according to which "the Court can only exercise jurisdiction over a State with its consent". The Court accordingly found that it was not required to consider Australia's other objections and that it could not rule on Portugal's claims on the merits.

1.64 *Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Senegal)*

On 12 March 1991, while proceedings were still in progress in the case brought by Guinea-Bissau against Senegal concerning the *Arbitral Award of 31 July 1989* (see No. 1.61 above), Guinea-Bissau filed a further Application instituting proceedings against Senegal, in which the Court was asked to adjudge and declare:

> "What should be, on the basis of the international law of the sea and of all the relevant elements of the case, including the future decision of the Court in the case concerning the Arbitral 'award' of 31 July 1989, the line (to be drawn on a map) delimiting all the maritime territories appertaining respectively to Guinea-Bissau and Senegal."

For its part, Senegal indicated that it expressed every reservation as to the admissibility of that fresh claim, and possibly as to the Court's jurisdiction. At a meeting held by the President of the Court with the representatives of the Parties on 5 April 1991, the latter agreed that no measure should be taken in the case until the Court had delivered its decision in the other case pending between the two States. The Court delivered its Judgment in that case on 12 November 1991 indicating, *inter alia*, that it considered it "highly desirable that the elements of the dispute that were not settled by the Arbitral Award of 31 July 1989 be resolved as soon as possible, as both Parties desire". The Parties then initiated negotiations. As they were able to conclude an "accord de gestion et de coopération", they subsequently, at a meeting with the President of the Court on 1 November 1995, notified him of their decision to discontinue the proceedings. By a letter dated 2 November 1995, the Agent of Guinea-Bissau confirmed that his Government, by virtue of the agreement reached by the two Parties on the disputed zone, had decided to discontinue the proceedings. By a letter dated 6 November 1995, the Agent of Senegal confirmed that his Government agreed to that discontinuance. On 8 November 1995, the Court made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's List.

1.65. *Passage through the Great Belt (Finland v. Denmark)*

On 17 May 1991 Finland instituted proceedings against Denmark in respect of a dispute concerning passage through the Great Belt (Storebælt), and the project by the Government of Denmark to construct a fixed traffic connection for both road and rail traffic across the West and East Channels of the Great Belt. The effect of this project, and in particular of the planned high-level suspension bridge over the East Channel, would have been permanently to close the Baltic for deep draught vessels of over 65 m height, thus preventing the passage of such drill ships and oil rigs manufactured in Finland as required more than that clearance. In its Application Finland requested the Court to adjudge and declare *(a)* that there was a right of free passage through the Great Belt which applied to all ships entering and leaving Finnish ports and shipyards; *(b)* that this right extended to drill ships, oil rigs and reasonably foreseeable ships; *(c)* that the construction of a fixed bridge over the Great Belt as currently planned by Denmark would be incompatible with the right of passage mentioned in subparagraphs *(a)* and *(b)* above and; *(d)* that Denmark and Finland ought to start negotiations, in good faith, on how the right of free passage, as set out in subparagraphs *(a)* to *(c)* above, should be guaranteed. On 23 May 1991, Finland requested the Court to indicate certain provisional measures aimed, principally, at stopping all construction works in connection with the planned bridge project over the East Channel of the Great Belt which it was alleged would prevent the passage of ships, in particular drill ships and oil rigs, entering and leaving Finnish ports and shipyards.

By an Order dated 29 July 1991, the Court dismissed that request for the indication of provisional measures by Finland, while at the same time indicating that, pending its decision on the merits, any negotiation between the Parties with a view to achieving a direct and friendly settlement was to be welcomed, and going on to say that it would be appropriate for the Court, with the co-operation of the Parties, to ensure that the decision on the merits was reached with all possible expedition. By a letter dated 3 September 1992, the Agent of Finland, referring to the relevant passage of the Order, stated that a settlement of the dispute had been attained and accordingly notified the Court of the discontinuance of the case. Denmark let it be known that it had no objection to that discontinuance. Consequently, the President of the Court, on 10 September 1992, made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's List.

166. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*

On 8 July 1991, Qatar filed in the Registry of the Court an Application instituting proceedings against Bahrain in respect of certain disputes between the two States relating to sovereignty over the Hawar Islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah and the delimitation of their maritime areas. Qatar founded the jurisdiction of the Court upon certain agreements between the Parties stated to have been concluded in December 1987 and December 1990, the subject and scope of the commitment to accept that jurisdiction being determined by a formula proposed by Bahrain to Qatar in October 1988 and accepted by the latter

State in December 1990 (the "Bahraini formula"). As Bahrain contested the basis of jurisdiction invoked by Qatar, the Parties agreed that the written proceedings should first be addressed to the questions of jurisdiction and admissibility. After a Memorial of the Applicant and Counter-Memorial of the Respondent had been filed, the Court directed that a Reply and a Rejoinder be filed by each of them, respectively.

On 1 July 1994 the Court delivered a first Judgment on the above-mentioned questions. It took the view that both the exchanges of letters of December 1987 between the King of Saudi Arabia and the Amir of Qatar, and between the King of Saudi Arabia and the Amir of Bahrain, and the document entitled "Minutes" and signed at Doha in December 1990 constituted international agreements creating rights and obligations for the Parties; and that by the terms of those agreements they had undertaken to submit to the Court the whole of the dispute between them. In the latter regard, the Court pointed out that the Application of Qatar did not cover some of the constitutive elements that the Bahraini formula was supposed to cover. It accordingly decided to give the Parties the opportunity to submit to it "the whole of the dispute" as circumscribed by the Minutes of 1990 and that formula, while fixing 30 November 1994 as the time-limit within which the Parties were, jointly or separately, to take action to that end. On the prescribed date, Qatar filed a document entitled "Act", which referred to the absence of an agreement between the Parties to act jointly and declared that it was submitting "the whole of the dispute" to the Court. On the same day, Bahrain filed a document entitled "Report" in which it indicated, *inter alia*, that the submission to the Court of "the whole of the dispute" must be "consensual in character, that is, a matter of agreement between the Parties". By observations submitted to the Court at a later time, Bahrain indicated that the unilateral "Act" of Qatar did not "create that jurisdiction [of the Court] or effect a valid submission in the absence of Bahrain's consent". By a second Judgment on the questions of jurisdiction and admissibility, delivered on 15 February 1995, the Court found that it had jurisdiction to adjudicate upon the dispute submitted to it between Qatar and Bahrain, and that the Application of Qatar, as formulated on 30 November 1994, was admissible. The Court, having proceeded to an examination of the two paragraphs constituting the Doha Agreement, found that, in that Agreement, the Parties had reasserted their consent to its jurisdiction and had defined the object of the dispute in accordance with the Bahraini formula; it further found that the Doha Agreement permitted the unilateral seisin and that it was now seised of the whole of the dispute. By two Orders, the Court subsequently fixed and then extended the time-limit within which each of the Parties could file a Memorial on the merits.

Following the objections raised by Bahrain as to the authenticity of certain documents annexed to the Memorial and Counter-Memorial of Qatar, the Court, by an Order of 30 March 1998, fixed a time-limit for the filing, by the latter, of a report concerning the authenticity of each of the disputed documents. By the same Order, the Court directed the submission of a Reply on the merits of the dispute by each of the Parties. Qatar having decided to disregard the challenged documents for the purposes of the case, the Court, by an Order of 17 February 1999, decided that the Replies would not rely on those documents. It also granted an extension of the time-limit for the filing of the said Replies.

In its Judgment of 16 March 2001, the Court, after setting out the procedural background in the case, recounted the complex history of the dispute. It noted that Bahrain and Qatar had concluded exclusive protection agreements with Great Britain in 1892 and 1916 respectively, and that that status of protected States had ended in 1971. The Court further cited the disputes which had arisen between Bahrain and Qatar on the occasion, *inter alia*, of the granting of concessions to oil companies, as well as the efforts made to settle those disputes.

The Court first considered the Parties' claims to Zubarah. It stated that, in the period after 1868, the authority of the Sheikh of Qatar over Zubarah had been gradually consolidated, that it had been acknowledged in the Anglo-Ottoman Convention of 29 July 1913 and definitively established in 1937. It further stated that there was no evidence that members of the Naim tribe had exercised sovereign authority on behalf of the Sheikh of Bahrain within Zubarah. Accordingly, it concluded that Qatar had sovereignty over Zubarah.

Turning to the Hawar Islands, the Court stated that the decision by which the British Government had found in 1939 that those islands belonged to Bahrain did not constitute an arbitral award, but that did not mean that it was devoid of legal effect. It noted that Bahrain and Qatar had consented to Great Britain settling their dispute at the time and found that the 1939 decision must be regarded as a decision that was binding from the outset on both States and continued to be so after 1971. Rejecting Qatar's arguments that the decision was null and void, the Court concluded that Bahrain had sovereignty over the Hawar Islands.

The Court observed that the British decision of 1939 did not mention Janan Island, which it considered as forming a single island with Hadd Janan. It pointed out, however, that in letters sent in 1947 to the Rulers of Qatar and Bahrain, the British Government had made it clear that "Janan Island is not regarded as being included in the islands of the Hawar group". The Court considered that the British Government, in so doing, had provided an authoritative interpretation of its 1939 decision, an interpretation which revealed that it regarded Janan as belonging to Qatar. Accordingly, Qatar had sovereignty over Janan Island, including Hadd Janan.

The Court then turned to the question of the maritime delimitation. It recalled that international customary law was the applicable law in the case and that the Parties had requested it to draw a single maritime boundary. In the southern part, the Court had to draw a boundary delimiting the territorial seas of the Parties, areas over which they enjoyed territorial sovereignty (including sea-bed, superjacent waters and superjacent aerial space). In the northern part, the Court had to make a delimitation between areas in which the Parties had only sovereign rights and functional jurisdiction (continental shelf, exclusive economic zone).

With respect to the territorial seas, the Court considered that it had to draw provisionally an equidistance line (a line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each of the two States is measured) and then to consider whether that line must be adjusted in the light of any special circumstances. As the Parties had not specified the baselines to be used, the Court recalled that, under the applicable rules of law, the normal baseline for measuring the breadth of the territorial sea was the low-water line along the coast. It observed that Bahrain had not included a claim to the status of archipelagic State in its formal submissions and that the Court was therefore not requested to take a position on that issue. In order to determine what constituted the Parties' relevant coasts, the Court first had to establish which islands came under their sovereignty. Bahrain had claimed to have sovereignty over the islands of Jazirat Mashtan and Umm Jalid, a claim which had not been contested by Qatar. As to Qit'at Jaradah, the nature of which was disputed, the Court held that it should be considered as an island because it was above water at high tide; the Court added that the activities which had been carried out by Bahrain were sufficient to support its claim of sovereignty over the island. With regard to low-tide elevations, the Court, after noting that international treaty law was silent on the question whether those elevations should be regarded as "territory", found that low-tide elevations situated in the overlapping area of the territorial seas of both States could not be taken into consideration for the purposes of drawing the equidistance line. That was true of Fasht ad Dibal, which both Parties regarded as a low-tide elevation. The Court then considered whether there were any special circumstances which made it necessary to adjust the equidistance line in order to obtain an equitable result. It found that there were such circumstances which justified choosing a delimitation line passing on the one hand between Fasht al Azm and Qit'at ash Shajarah and, on the other, between Qit'at Jaradah and Fasht ad Dibal.

In the northern part, the Court, citing its case law, followed the same approach, provisionally drawing an equidistance line and examining whether there were circumstances requiring an adjustment of that line. The Court rejected Bahrain's argument that the existence of certain pearling banks situated to the north of Qatar, and which were predominantly exploited in the past by Bahraini fishermen, constituted a circumstance justifying a shifting of the line. It also rejected Qatar's argument that there was a significant disparity between the coastal lengths of the Parties calling for an appropriate correction. The Court further stated that considerations of equity required that the maritime formation of Fasht al Jarim should have no effect in determining the boundary line.

1.67-1.68. *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) (Libyan Arab Jamahiriya v. United States of America)*

On 3 March 1992 the Libyan Arab Jamahiriya filed in the Registry of the Court two separate Applications instituting proceedings against the Government of the United States of America and the Government of the United Kingdom, in respect of a dispute over the interpretation and application of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed in Montreal on 23 September 1971, a dispute arising from acts resulting in the aerial incident that occurred over Lockerbie, Scotland, on 21 December 1988. In its Applications, Libya referred to the charging and indictment of two Libyan nationals by a Grand Jury of the United States of America and by the Lord Advocate of Scotland, respectively, with having caused a bomb to be placed aboard Pan Am flight 103. The bomb subsequently exploded, causing the aeroplane to crash, all persons aboard being killed. Libya pointed out that the acts alleged constituted an offence within the meaning of Article 1 of the Montreal Convention, which it claimed to be the only appropriate Convention in force between the Parties, and asserted that it had fully complied with its own obligations under that instrument, Article 5 of which required a State to establish its own jurisdiction over alleged offenders present in its territory in the event of their non-extradition; and that there was no extradition treaty between Libya and the respective other Parties, so that Libya was obliged under Article 7 of the Convention to submit the case to its competent authorities for the purpose of prosecution. Libya contended that the United States of America and the United Kingdom were in breach of the Montreal Convention through rejection of its efforts to resolve the matter within the framework of international law, including the Convention itself, in that they were placing pressure upon Libya to surrender the two Libyan nationals for trial. On 3 March 1992, Libya made two separate requests to the Court to indicate forthwith certain provisional measures, namely: *(a)* to enjoin the United States and the United Kingdom respectively from taking any action against Libya calculated to coerce or compel it to surrender the accused individuals to any jurisdiction outside Libya; and *(b)* to ensure that no steps were taken that would prejudice in any way the rights of Libya with respect to the legal proceedings that were the subject of Libya's Applications.

On 14 April 1992, the Court read two Orders on those requests for the indication of provisional measures, in which it found that the circumstances of the cases were not such as to require the exercise of its powers to indicate such measures. Within the time-limit fixed for the filing of its Counter-Memorial, each of the respondent States filed preliminary objections: the United States of America filed certain preliminary objections requesting the Court to adjudge and declare that it lacked jurisdiction and could not entertain the case; the United Kingdom filed certain preliminary objections to the jurisdiction of the Court and to the admissibility of the Libyan claims. In accordance with the provisions of Article 79 of the Rules of Court, the proceedings on the merits were suspended in those two cases. By Orders dated 22 September 1995, the Court then fixed 22 December 1995 as the time-limit within which the Libyan Arab Jamahiriya might present, in each case, a written statement of its observations and submissions on the preliminary objections raised, which it did within the prescribed time-limit.

On 27 February 1998, the Court delivered two Judgments on the preliminary objections raised by the United Kingdom and the United States of America. The Court first began by dismissing the Respondents' respective objections to jurisdiction on the basis of the alleged absence of a dispute between the Parties concerning the interpretation or application of the Montreal Convention. It declared that it had jurisdiction on the basis of Article 14, paragraph 1, of that Convention to hear the disputes between Libya and the respondent States concerning the interpretation or application of the provisions of the Convention. The Court then went on to dismiss the objection to admissibility based on Security Council resolutions 748 (1992) and 883 (1993). Lastly, it found that the objection raised by each of the respondent States on the ground that those resolutions would have rendered the claims of Libya without object did not, in the circumstances of the case, have an exclusively preliminary character.

In June 1999, the Court authorized Libya to submit a Reply, and the United Kingdom and the United States to file Rejoinders. Those pleadings were filed by the Parties within the time-limits laid down by the Court and its President.

By two letters of 9 September 2003, the Governments of Libya and the United Kingdom on the one hand, and of Libya and the United States on the other, jointly notified the Court that they had "agreed to discontinue with prejudice the proceedings". Following those notifications, the President of the Court, on 10 September 2003, made an Order in each case placing on record the discontinuance of the proceedings with prejudice, by agreement of the Parties, and directing the removal of the case from the Court's List.

1.69. Oil Platforms
(Islamic Republic of Iran v. United States of America)

On 2 November 1992, the Islamic Republic of Iran filed in the Registry of the Court an Application instituting proceedings against the United States of America with respect to the destruction of Iranian oil platforms. The Islamic Republic founded the jurisdiction of the Court upon a provision of the Treaty of Amity, Economic Relations and Consular Rights between Iran and the United States, signed at Tehran on 15 August 1955. In its Application, Iran alleged that the destruction caused by several warships of the United States Navy, in October 1987 and April 1988, to three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, constituted a fundamental breach of various provisions of the Treaty of Amity and of international law. Time-limits for the filing of written pleadings were then fixed and subsequently extended by two Orders of the President of the Court. On 16 December 1993, within the extended time-limit for filing the Counter-Memorial, the United States of America filed a preliminary objection to the Court's jurisdiction. In accordance with the terms of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended; by an Order of 18 January 1994, the Court fixed 1 July 1994 as the time-limit within which Iran could present a written statement of its observations and submissions on the objection, which was filed within the prescribed time-limit.

In its Judgment of 12 December 1996, the Court rejected the preliminary objection raised by the United States of America and found that it had jurisdiction, on the basis of Article XXI, paragraph 2, of the Treaty of 1955, to entertain the claims made by Iran under Article X, paragraph 1, of that Treaty, which protects freedom of commerce and navigation between the territories of the Parties.

When filing its Counter-Memorial, the United States of America submitted a counter-claim requesting the Court to adjudge and declare that, through its actions in the Persian Gulf in 1987 and 1988, Iran had also breached its obligations under Article X of the Treaty of 1955. Iran having disputed the admissibility of that counter-claim under Article 80, paragraph 1, of the Rules, the Court ruled on the matter in an Order of 10 March 1998. It found that the counter-claim was admissible as such and formed part of the current proceedings, and directed Iran to submit a Reply and the United States to submit a Rejoinder. Those pleadings were filed within the extended time-limits thus fixed. In its Order of 1998, the Court also stated that it was necessary, in order to ensure strict equality between the Parties, to reserve the right of Iran to present its views in writing a second time on the counter-claim, in an additional pleading, the filing of which might be the subject of a subsequent Order. Such an Order was made by the Vice-President on 28 August 2001, and Iran subsequently filed its additional pleading within the time-limits fixed. Public sittings on the claim of Iran and the counter-claim of the United States of America were held from 17 February to 7 March 2003.

The Court delivered its Judgment on 6 November 2003. Iran had contended that, in attacking on two occasions and destroying three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, the United States had violated freedom of commerce between the territories of the Parties as guaranteed by the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran. It sought reparation for the injury thus caused. The United States had argued in its counter-claim that it was Iran which had violated the 1955 Treaty by attacking vessels in the Gulf and otherwise engaging in military actions that were dangerous and detrimental to commerce and navigation between the United States and Iran. The United States likewise sought reparation.

The Court first considered whether the actions by American naval forces against the Iranian oil complexes were justified under the 1955 Treaty as measures necessary to protect the essential security interests of the United States (Art. XX, para. 1 *(d)*, of the Treaty). Interpreting the Treaty in light of the relevant rules of international law, it concluded that the United States was only entitled to have recourse to force under the provision in question if it was acting in self-defence. The United States could exercise such a right of self-defence only if it had been the victim of an armed attack by Iran and the United States actions must have been necessary and proportional to the armed attack against it. After carrying out a detailed examination of the evidence provided by the Parties, the Court found that the United States had not succeeded in showing that these various conditions were satisfied, and concluded that the United States was therefore not entitled to rely on the provisions of Article XX, paragraph 1 *(d)*, of the 1955 Treaty.

The Court then examined the issue of whether the United States, in destroying the platforms, had impeded their normal operation, thus preventing Iran from enjoying freedom of commerce "between the territories of the two High Contracting Parties" as guaranteed by the 1955 Treaty (Art. X, para. 1). It concluded that, as regards the first attack, the platforms attacked were under repair and not operational, and that at that time there was thus no trade in crude oil from those platforms between Iran and the United States. Accordingly, the attack on those platforms could not be considered as having affected freedom of commerce between the territories of the two States. The Court reached the same conclusion in respect of the later attack on two other complexes, since all trade in crude oil between Iran and the United States had been suspended as a result of an embargo imposed by an Executive Order adopted by the American authorities. The Court thus found that the United States had not breached its obligations to Iran under Article X, paragraph 1, of the 1955 Treaty and rejected Iran's claim for reparation.

In regard to the United States counter-claim, the Court, after rejecting the objections to jurisdiction and admissibility raised by Iran, considered whether the incidents attributed by the United States to Iran infringed freedom of commerce or navigation between the territories of the Parties as guaranteed by Article X, paragraph 1, of the 1955 Treaty. The Court found that none of the ships alleged by the United States to have been damaged by Iranian attacks was engaged in commerce or navigation between the territories of the two States. Nor did the Court accept the generic claim by the United States that the actions of Iran had made the Persian Gulf unsafe for shipping, concluding that, according to the evidence before it, there was not, at the relevant time, any actual impediment to commerce or navigation between the territories of Iran and the United States. The Court accordingly rejected the United States counter-claim for reparation.

170. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*

On 20 March 1993, the Republic of Bosnia and Herzegovina instituted proceedings against the Federal Republic of Yugoslavia in respect of a dispute concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948, as well as various matters which Bosnia and Herzegovina claimed were connected therewith. The Application invoked Article IX of the Genocide Convention as the basis for the jurisdiction of the Court. Subsequently, Bosnia and Herzegovina also invoked certain additional bases of jurisdiction.

On 20 March 1993, immediately after the filing of its Application, Bosnia and Herzegovina submitted a request for the indication of provisional measures under Article 41 of the Statute and, on 1 April 1993, Yugoslavia submitted written observations on Bosnia and Herzegovina's request for provisional measures, in which it, in turn, recommended the Court to order the application of provisional measures to Bosnia and Herzegovina. By an Order dated 8 April 1993, the Court, after hearing the Parties, indicated certain provisional measures with a view to the protection of rights under the Genocide Convention. On 27 July 1993, Bosnia and Herzegovina submitted a new request for the indication of provisional measures and, on 10 August 1993, Yugoslavia also submitted a request for the indication of provisional measures. By an Order dated 13 September 1993, the Court, after hearing the Parties, reaffirmed the measures indicated in its Order of 8 April 1993 and declared that those measures should be immediately and effectively implemented. Then, within the extended time-limit of 30 June 1995 for the filing of its Counter-Memorial, Yugoslavia, referring to Article 79, paragraph 1, of the Rules of Court, raised preliminary objections concerning both the admissibility of the Application and the jurisdiction of the Court to entertain the case.

The title of the case was amended following the adoption and promulgation of the Constitutional Charter of Serbia and Montenegro by the Assembly of the Federal Republic of Yugoslavia on 4 February 2003, as a result of which the name of the State changed from the "Federal Republic of Yugoslavia" to "Serbia and Montenegro". In the following summary, the name "Yugoslavia" has been employed with respect to all proceedings before 4 February 2003 and the name "Serbia and Montenegro" has been used for all events subsequent to that date and prior to 3 June 2006. On this latter date, the President of the Republic of Serbia informed the Secretary-General of the United Nations that, following the Declaration of Independence adopted by the National Assembly of Montenegro on 3 June 2006, "the membership of the state union Serbia and Montenegro in the United Nations, including all organs and organizations of the United Nations system, [would be] continued by the Republic of Serbia on the basis of Article 60 of the Constitutional Charter of Serbia and Montenegro". He further stated that "in the United Nations the name 'Republic of Serbia' [was] to be henceforth used instead of the name 'Serbia and Montenegro'" and added that the Republic of Serbia "remain[ed] responsible in full for all the rights and obligations of the state union of Serbia and Montenegro under the UN Charter". The name "Republic of Serbia" or "Serbia" has therefore been used in the summary for all events subsequent to 3 June 2006.

In its Judgment of 11 July 1996, the Court rejected the preliminary objections raised by Yugoslavia and found that it had jurisdiction to deal with the dispute on the basis of Article IX of the Genocide Convention, dismissing the additional bases of jurisdiction invoked by Bosnia and Herzegovina. Among other things, it found that the Convention bound the two Parties and that there was a legal dispute between them falling within the provisions of Article IX.

By an Order dated 23 July 1996, the President of the Court fixed 23 July 1997 as the time-limit for the filing by Yugoslavia of its Counter-Memorial on the merits. The Counter-Memorial was filed within the prescribed time-limit and contained counter-claims, by which Yugoslavia requested the Court, among other things, to adjudge and declare that Bosnia and Herzegovina was responsible for acts of genocide committed against the Serbs in Bosnia and Herzegovina and for other violations of the Genocide Convention. The admissibility of the counter-claims under Article 80, paragraph 1, of the Rules of Court having been called into question by Bosnia and Herzegovina, the Court ruled on the matter, declaring, in its Order of 17 December 1997, that the counter-claims were admissible as such and formed part of the proceedings in the case. The Reply of Bosnia and Herzegovina and the Rejoinder of Yugoslavia were subsequently filed within the time-limits laid down by the Court and its President. During 1999 and 2000, various exchanges of letters took place concerning new procedural difficulties which had emerged in the case. In April 2001, Yugoslavia informed the Court that it wished to withdraw its counter-claims. As Bosnia and Herzegovina had raised no objection, the President of the Court, by an Order of 10 September 2001, placed on record the withdrawal by Yugoslavia of the counter-claims it had submitted in its Counter-Memorial. On 4 May 2001, Yugoslavia submitted to the Court a document entitled "Initiative to the Court to reconsider *ex officio* jurisdiction over Yugoslavia", in which it first asserted that the Court had no jurisdiction *ratione personae* over Serbia and Montenegro and secondly requested the Court to "suspend proceedings regarding the merits of the case until a decision on this Initiative", i.e., on the jurisdictional issue, had been rendered. On 1 July 2001, it also filed an Application for revision of the Judgment of 11 July 1996; this was found to be inadmissible by the Court in its Judgment of 3 February 2003 (see No. 138 below). In a letter dated 12 June 2003, the Registrar informed the Parties to the case that the Court had decided that it could not accede to the Applicant's request to suspend the proceedings on the merits.

Following public hearings held between 27 February 2006 and 9 May 2006, the Court rendered its Judgment on the merits on 26 February 2007. It began by examining the new jurisdictional issues raised by the Respondent arising out of its admission as a new Member of the United Nations in 2001. The Court affirmed that it had jurisdiction on the basis of Article IX of the Genocide Convention, stating in particular that its 1996 Judgment, whereby it found it had jurisdiction under the Genocide Convention, benefited from the "fundamental" principle of *res judicata* which guaranteed "the stability of legal relations", and that it was in the interest of each Party "that an issue which has already been adjudicated in favour of that party be not argued again". The Court then made extensive findings of fact as to whether alleged atrocities had occurred and, if so, whether they could be characterized as genocide. After determining that massive killings and other atrocities were perpetrated during the conflict throughout the territory of Bosnia and Herzegovina, the Court found that these acts were not accompanied by the specific intent that defines the crime of genocide, namely the intent to destroy, in whole or in part, the protected group. The Court did, however, find that the killings in Srebrenica in July 1995 were committed with the specific intent to destroy in part the group of Bosnian Muslims in that area and that what happened there was indeed genocide. The Court found that there was corroborated evidence which indicated that the decision to kill the adult male population of the Muslim community in Srebrenica had been taken by some members of the VRS (Army of the Republika Srpska) Main Staff. The evidence before the Court, however, did not prove that the acts of the VRS could be attributed to the Respondent under the rules of international law of State responsibility. Nonetheless, the Court found that the Republic of Serbia had violated its obligation contained in Article I of the Genocide Convention to prevent the Srebrenica genocide. The Court observed that this obligation required States that are aware, or should normally have been aware, of the serious danger that acts of genocide would be committed, to employ all means reasonably available to them to prevent genocide, within the limits permitted by international law.

The Court further held that the Respondent had violated its obligation to punish the perpetrators of genocide, including by failing to co-operate fully with the International Criminal Tribunal for the former Yugoslavia (ICTY) with respect to the handing over for trial of General Ratko Mladić. This failure constituted a violation of the Respondent's duties under Article VI of the Genocide Convention.

In respect of Bosnia and Herzegovina's request for reparation, the Court found that, since it had not been shown that the genocide at Srebrenica would in fact have been averted if Serbia had attempted to prevent it, financial compensation for the failure to prevent the genocide at Srebrenica was not the appropriate form of reparation. The Court considered that the most appropriate form of satisfaction would be a declaration in the operative clause of the Judgment that Serbia had failed to comply with the obligation to prevent the crime of genocide. As for the obligation to punish acts of genocide, the Court found that a declaration in the operative clause that Serbia had violated its obligations under the Convention and that it must transfer individuals accused of genocide to the ICTY and must co-operate fully with the Tribunal would constitute appropriate satisfaction.

[illegible] Gabcikovo-Nagymaros Project (Hungary/Slovakia)

On 2 July 1993 the Governments of the Republic of Hungary and of the Slovak Republic notified jointly to the Registry of the Court a Special Agreement, signed at Brussels on 7 April 1993, for the submission to the Court of certain issues arising out of differences which had existed between the Republic of Hungary and the Czech and Slovak Federal Republic regarding the implementation and the termination of the Budapest Treaty of 16 September 1977 on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System and on the construction and operation of the "provisional solution". The Special Agreement records that the Slovak Republic is in this respect the sole successor State of the Czech and Slovak Federal Republic. In Article 2 of the Special Agreement, the Court was asked to say : *(a)* whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros project and on that part of the Gabčíkovo project for which the Treaty attributed responsibility to the Republic of Hungary; *(b)* whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the "provisional solution" and to put into operation from October 1992 this system (the damming up of the Danube at river kilometre 1,851.7 on Czechoslovak territory and the resulting consequences for the water and navigation course); and *(c)* what were the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary. The Court was also requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the above-mentioned questions. Each of the Parties filed a Memorial, a Counter-Memorial and a Reply accompanied by a large number of annexes.

In June 1995, the Agent of Slovakia requested the Court to visit the site of the Gabčíkovo-Nagymaros hydroelectric dam project on the Danube for the purpose of obtaining evidence. A "Protocol of Agreement" was thus signed in November 1995 between the two Parties. The visit to the site, the first such visit by the Court in its 50-year history, took place from 1 to 4 April 1997 between the first and second rounds of oral pleadings.

In its Judgment of 25 September 1997, the Court asserted that Hungary was not entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros project and on the part of the Gabčíkovo project for which it was responsible, and that Czechoslovakia was entitled to proceed, in November 1991, to the "provisional solution" as described by the terms of the Special Agreement. On the other hand, the Court stated that Czechoslovakia was not entitled to put into operation, from October 1992, the barrage system in question and that Slovakia, as successor to Czechoslovakia, had become Party to the Treaty of 16 September 1977 as from 1 January 1993. The Court also decided that Hungary and Slovakia must negotiate in good faith in the light of the prevailing situation and must take all necessary measures to ensure the achievement of the objectives of the said Treaty, in accordance with such modalities as they might agree upon. Further, Hungary was to compensate Slovakia for the damage sustained by Czechoslovakia and by Slovakia on account of the suspension and abandonment by Hungary of works for which it was responsible; whereas, again according to the Judgment of the Court, Slovakia was to compensate Hungary for the damage it had sustained on account of the putting into operation of the dam by Czechoslovakia and its maintenance in service by Slovakia.

On 3 September 1998, Slovakia filed in the Registry of the Court a request for an additional Judgment in the case. Slovakia considered such a Judgment necessary because of the unwillingness of Hungary to implement the Judgment delivered by the Court on 25 September 1997. In its request, Slovakia stated that the Parties had conducted a series of negotiations of the modalities for executing the 1997 Judgment and had initialled a draft Framework Agreement, which had been approved by the Slovak Government. However, according to the latter, Hungary had decided to postpone its approval and had even disavowed it when the new Hungarian Government had come into office. Slovakia requested the Court to determine the modalities for executing the Judgment, and, as the basis for its request, invoked the Special Agreement signed at Brussels on 7 April 1993 by itself and Hungary. After the filing by Hungary of a statement of its position on Slovakia's request, the Parties resumed negotiations and informed the Court on a regular basis of the progress in them.

Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)

On 29 March 1994, Cameroon filed in the Registry of the Court an Application instituting proceedings against Nigeria with respect to the question of sovereignty over the Bakassi Peninsula, and requesting the Court to determine the course of the maritime frontier between the two States in so far as that frontier had not been established in 1975. As a basis for the jurisdiction of the Court, Cameroon referred to the declarations made by the two States under Article 36, paragraph 2, of the Statute of the Court, by which they accepted that jurisdiction as compulsory. In its Application, Cameroon referred to "an aggression by the Federal Republic of Nigeria, whose troops are occupying several Cameroonian localities on the Bakassi Peninsula", and asked the Court, *inter alia*, to adjudge and declare that sovereignty over the Peninsula of Bakassi was Cameroonian, by virtue of international law, and that Nigeria had violated and was violating the fundamental principle of respect for frontiers inherited from colonization *(uti possidetis juris)*, as well as other rules of conventional and customary international law, and that Nigeria's international responsibility was involved. Cameroon also requested the Court to proceed to prolong the course of its maritime boundary with Nigeria up to the limit of the maritime zone which international law placed under their respective jurisdictions.

On 6 June 1994, Cameroon filed in the Registry an Additional Application "for the purpose of extending the subject of the dispute" to a further dispute described as relating essentially "to the question of sovereignty over part of the territory of Cameroon in the area of Lake Chad", while also requesting the Court to specify definitively the frontier between Cameroon and Nigeria from Lake Chad to the sea. That Application was treated as an amendment to the initial Application. After Nigeria had raised certain preliminary objections, Cameroon presented, on 1 May 1996, a written statement of its observations and submissions relating thereto, in accordance with an Order of the President dated 10 January 1996. Moreover, on 12 February 1996, Cameroon, referring to the "grave incidents which [had] taken place between the . . . forces [of the Parties] in the Bakassi Peninsula since . . . 3 February 1996", asked the Court to indicate provisional measures. By an Order dated 15 March 1996, the Court indicated a number of provisional measures aimed principally at putting an end to the hostilities.

The Court held hearings from 2 to 11 March 1998 on the preliminary objections raised by Nigeria. In its Judgment of 11 June 1998, the Court found that it had jurisdiction to adjudicate upon the merits of the dispute and that Cameroon's requests were admissible. The Court rejected seven of the preliminary objections raised by Nigeria and declared that, as the eighth did not have an exclusively preliminary character, it should be settled during the proceedings on the merits.

Nigeria filed its Counter-Memorial, including counter-claims, within the time-limit extended by the Court. On 30 June 1999, the Court adopted an Order declaring Nigeria's counter-claims admissible and fixing 4 April 2000 as the time-limit for the filing of the Reply of Cameroon and 4 January 2001 as the time-limit for the filing of the Rejoinder of Nigeria. In its Order, the Court also reserved the right of Cameroon to present its views in writing a second time on the Nigerian counter-claims in an additional pleading which might be the subject of a subsequent Order. The Reply and the Rejoinder were duly filed within the time-limits so fixed. In January 2001, Cameroon informed the Court that it wished to present its views in writing a second time on Nigeria's counter-claims. As Nigeria had no objection to that request, the Court authorized the presentation by Cameroon of an additional pleading relating exclusively to the counter-claims submitted by Nigeria. That pleading was duly filed within the time-limit fixed by the Court.

On 30 June 1999, the Republic of Equatorial Guinea filed an Application for permission to intervene in the case. Each of the two Parties having filed its written observations on that Application and Equatorial Guinea having informed the Court of its views with respect to them, the Court, by Order of 21 October 1999, authorized Equatorial Guinea to intervene in the case pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes set out in its Application. Equatorial Guinea filed a written statement and each of the Parties filed written observations on the latter within the time-limits fixed by the Court. Public hearings on the merits were held from 18 February to 21 March 2002.

In its Judgment of 10 October 2002, the Court determined as follows the course of the boundary, from north to south, between Cameroon and Nigeria :

— In the Lake Chad area, the Court decided that the boundary was delimited by the Thomson-Marchand Declaration of 1929-1930, as incorporated in the

Henderson-Fleuriau Exchange of Notes of 1931 (between Great Britain and France); it found that the boundary started in the Lake from the Cameroon-Nigeria-Chad tripoint (whose co-ordinates it defined) and followed a straight line to the mouth of the River Ebeji as it was in 1931 (whose co-ordinates it also defined) and thence ran in a straight line to the point where the river today divided into two branches.

— Between Lake Chad and the Bakassi Peninsula, the Court confirmed that the boundary was delimited by the following instruments:

(i) from the point where the River Ebeji bifurcated as far as Tamnyar Peak, by the Thomson-Marchand Declaration of 1929-1930 (paras. 2-60), as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931;

(ii) from Tamnyar Peak to pillar 64 referred to in Article XII of the Anglo-German Agreement of 12 April 1913, by the British Order in Council of 2 August 1946;

(iii) from pillar 64 to the Bakassi Peninsula, by the Anglo-German Agreements of 11 March and 12 April 1913.

— The Court examined point by point seventeen sectors of the land boundary and specified for each one how the above-mentioned instruments were to be interpreted.

— In Bakassi, the Court decided that the boundary was delimited by the Anglo-German Agreement of 11 March 1913 (Arts. XVIII-XX) and that sovereignty over the Bakassi Peninsula lay with Cameroon. It decided that in that area the boundary followed the *thalweg* of the River Akpakorum (Akwayafe), dividing the Mangrove Islands near Ikang in the way shown on map TSGS 2240, as far as a straight line joining Bakassi Point and King Point.

— As regards the maritime boundary, the Court, having established that it had jurisdiction to address that aspect of the case — which Nigeria had disputed —, fixed the course of the boundary between the two States' maritime areas.

In its Judgment the Court requested Nigeria, expeditiously and without condition, to withdraw its administration and military or police forces from the area of Lake Chad falling within Cameroonian sovereignty and from the Bakassi Peninsula. It also requested Cameroon expeditiously and without condition to withdraw any administration or military or police forces which might be present along the land boundary from Lake Chad to the Bakassi Peninsula on territories which, pursuant to the Judgment, fell within the sovereignty of Nigeria. The latter had the same obligation in regard to territories in that area which fell within the sovereignty of Cameroon. The Court took note of Cameroon's undertaking, given at the hearings, to "continue to afford protection to Nigerians living in the [Bakassi] peninsula and in the Lake Chad area". Finally, the Court rejected Cameroon's submissions regarding the State responsibility of Nigeria, as well as Nigeria's counter-claims.

1.73 *Fisheries Jurisdiction (Spain v. Canada)*

On 28 March 1995, Spain filed in the Registry of the Court an Application instituting proceedings against Canada with respect to a dispute relating to the Canadian Coastal Fisheries Protection Act, as amended on 12 May 1994, to the implementing regulations of that Act, and to certain measures taken on the basis of that legislation, more particularly the boarding on the high seas, on 9 March 1995, of a fishing boat, the *Estai*, sailing under the Spanish flag. Spain indicated, *inter alia*, that by the amended Act an attempt was made to impose on all persons on board foreign ships a broad prohibition on fishing in the Regulatory Area of the North-West Atlantic Fisheries Organization (NAFO), that is, on the high seas, outside Canada's exclusive economic zone, while expressly permitting the use of force against foreign fishing boats in the zones that that Act terms the "high seas". Spain added that the implementing regulation of 3 March 1995 "expressly permit[s] such conduct as regards Spanish and Portuguese ships on the high seas". The Application of Spain alleged the violation of various principles and norms of international law and stated that there was a dispute between Spain and Canada which, going beyond the framework of fishing, seriously affected the very principle of the freedom of the high seas and, moreover, implied a very serious infringement of the sovereign rights of Spain. As a basis of the Court's jurisdiction, the Application referred to the declarations of Spain and of Canada made in accordance with Article 36, paragraph 2, of the Statute of the Court. As Canada contested the jurisdiction of the Court, on the basis of its aforementioned declaration, it was decided that the written pleadings should focus initially upon that question of jurisdiction. A Memorial of the Applicant and a Counter-Memorial of the Respondent were filed in that respect. By an Order dated 8 May 1996, the Court decided not to authorize the presentation of a Reply of the Applicant and a Rejoinder of the Respondent.

In its Judgment of 4 December 1998, the Court found that the dispute between the Parties was a dispute that had "ar[isen]" out of "conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area" and "the enforcement of such measures", and that, consequently, it was within the terms of one of the reservations in the Canadian declaration. The Court found that it therefore had no jurisdiction to adjudicate in the case.

1.74 *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case*[illegible]

On 21 August 1995, the New Zealand Government filed in the Registry a document entitled "Request for an Examination of the Situation" in which reference

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[illegible] The Court's decision in this case formed the object of an Order, in which it is indicated that the Request was entered in the General List for the sole purpose of enabling it to determine whether the conditions laid down in the said paragraph 63 had been fulfilled.

was made to a "proposed action announced by France which will, if carried out, affect the basis of the Judgment rendered by the Court on 20 December 1974 in the *Nuclear Tests (New Zealand* v. *France)* case", namely "a decision announced by France in a media statement of 13 June 1995" by the President of the French Republic, according to which "France would conduct a final series of eight nuclear weapons tests in the South Pacific starting in September 1995". In that Request, the Court was reminded that, at the end of its 1974 Judgment, it had found that it was not called upon to give a decision on the claim submitted by New Zealand in 1973, that claim no longer having any object, by virtue of the declarations by which France had undertaken not to carry out further atmospheric nuclear tests (see Nos. 1.43-1.44 above). That Judgment contained a paragraph 63 worded as follows:

> "Once the Court has found that a State has entered into a commitment concerning its future conduct it is not the Court's function to contemplate that it will not comply with it. However, the Court observes that if the basis of this Judgment were to be affected, the Applicant could request an examination of the situation in accordance with the provisions of the Statute . . ."

New Zealand asserted that this paragraph gave it the "right", in such circumstances, to request "the resumption of the case begun by application on 9 May 1973", and observed that the operative part of the Judgment concerned could not be construed as showing any intention on the part of the Court definitively to close the case. On the same day, the New Zealand Government also filed in the Registry a "Further Request for the Indication of Provisional Measures" in which reference was made, *inter alia*, to the Order for the indication of provisional measures made by the Court on 22 June 1973, which was principally aimed at ensuring that France would refrain from conducting any further nuclear tests at Mururoa and Fangataufa Atolls.

After holding public hearings on 11 and 12 September 1995, the Court made its Order on 22 September 1995. The Court found that, when inserting into paragraph 63 the sentence "the Applicant could request an examination of the situation in accordance with the provisions of the Statute", it had not excluded a special procedure for access to it (unlike those mentioned in the Court's Statute, such as the filing of a new application, or a request for interpretation or revision, which would have been open to the Applicant in any event); however, it found that that special procedure would only be available to the Applicant if circumstances were to arise which affected the basis of the 1974 Judgment. And that, it found, was not the case, as the decision announced by France in 1995 had related to a series of underground tests, whereas the basis of the Judgment of 1974 was France's undertaking not to conduct any further atmospheric nuclear tests. Consequently, New Zealand's Request for provisional measures and the Applications for permission to intervene submitted by Australia, Samoa, Solomon Islands, the

Marshall Islands and the Federated States of Micronesia as well as the Declarations of Intervention made by the last four States, all of which were proceedings incidental to New Zealand's main request, likewise had to be dismissed.

1.75. Kasikili/Sedudu Island (Botswana/Namibia)

On 29 May 1996, the Government of Botswana and the Government of Namibia notified jointly to the Registrar of the Court a Special Agreement which had been signed between them on 15 February 1996 and had entered into force on 15 May 1996, for the submission to the Court of the dispute existing between them concerning the boundary around Kasikili/Sedudu Island and the legal status of that island. The Special Agreement referred to a Treaty between Great Britain and Germany concerning the respective spheres of influence of the two countries, signed on 1 July 1890, and to the appointment on 24 May 1992 of a Joint Team of Technical Experts to determine the boundary between Namibia and Botswana around Kasikili/Sedudu Island on the basis of that Treaty and of the applicable principles of international law. Unable to reach a conclusion on the question submitted to it, the Joint Team of Technical Experts recommended recourse to a peaceful settlement of the dispute on the basis of the applicable rules and principles of international law. At a Summit Meeting held in Harare, Zimbabwe, on 15 February 1995, the Presidents of the two States agreed to submit the dispute to the Court.

Taking account of the relevant provisions of the Special Agreement, the Court, by an Order dated 24 June 1996, fixed time-limits for the filing, by each of the Parties, of a Memorial and a Counter-Memorial. Those pleadings were duly filed within the time-limits fixed.

The Court, in view of the agreement between the Parties, also authorized the filing of a Reply by each Party. The Replies were duly filed within the time-limits so prescribed.

In its Judgment of 13 December 1999, the Court began by stating that the island in question, which in Namibia is known as "Kasikili", and in Botswana as "Sedudu", is approximately 3.5 sq km in area, that it is located in the Chobe River, which divides around it to the north and south, and that it is subject to flooding of several months' duration, beginning around March. It briefly outlined the historical context of the dispute, then examined the text of the 1890 Treaty, which, in respect of the region concerned, located the dividing line between the spheres of influence of Great Britain and Germany in the "main channel" of the River Chobe. In the Court's opinion, the real dispute between the Parties concerned the location of that main channel, Botswana contending that it was the channel running north of Kasikili/Sedudu Island and Namibia the channel running south of the island. Since the Treaty did not define the notion of "main channel", the Court itself proceeded to determine which was the main channel of the Chobe River around the Island. In order to do so, it took into consideration, *inter alia*, the depth and the width of the channel, the flow (i.e., the volume of water carried), the bed profile configuration and the navigability of the channel. After considering the figures submitted by the Parties, as well as surveys carried out on the ground at different periods, the Court concluded that "the northern channel of the River Chobe around Kasikili/Sedudu Island must be regarded as its main channel". Having invoked the object and purpose of the 1890 Treaty and its *travaux préparatoires*, the Court examined at length the subsequent practice of the parties to the Treaty. The Court found that that practice did not result in any agreement between them regarding the interpretation of the Treaty or the application of its provisions. The Court further stated that it could not draw conclusions from the cartographic material "in view of the absence of any map officially reflecting the intentions of the parties to the 1890 Treaty" and in the light of "the uncertainty and inconsistency" of the maps submitted by the Parties to the dispute. It finally considered Namibia's alternative argument that it and its predecessors had prescriptive titles to Kasikili/Sedudu Island by virtue of the exercise of sovereign jurisdiction over it since the beginning of the century, with the full knowledge and acceptance of the authorities of Botswana and its predecessors. The Court found that, while the Masubia of the Caprivi Strip (territory belonging to Namibia) did indeed use the island for many years, they did so intermittently, according to the seasons and for exclusively agricultural purposes, without it being established that they occupied the island *à titre de souverain*, i.e., that they were exercising functions of State authority there on behalf of the Caprivi authorities. The Court therefore rejected that argument. After concluding that the boundary between Botswana and Namibia around Kasikili/Sedudu Island followed the line of deepest soundings in the northern channel of the Chobe and that the island formed part of the territory of Botswana, the Court recalled that, under the terms of an agreement concluded in May 1992 (the "Kasane Communique"), the Parties had undertaken to one another that there should be unimpeded navigation for craft of their nationals and flags in the channels around the Island.

1.76 *Vienna Convention on Consular Relations (Paraguay v. United States of America)*

On 3 April 1998, the Republic of Paraguay filed in the Registry an Application instituting proceedings against the United States of America in a dispute concerning alleged violations of the Vienna Convention on Consular Relations of 24 April 1963. Paraguay based the jurisdiction of the Court on Article 36, paragraph 1, of the Statute and on Article I of the Optional Protocol which accompanies the Vienna Convention on Consular Relations, and which gives the Court jurisdiction as regards the settlement of disputes arising out of the interpretation or application of that Convention. In its Application, Paraguay indicated that, in 1992, the authorities of the Commonwealth of Virginia had arrested a Paraguayan national, charged and convicted him of culpable homicide and sentenced him to death without informing him of his rights as required by Article 36, paragraph 1 *(b)*, of the Convention. Those rights included the right to request that the relevant consular office of the State of which he was a national be advised of his arrest and detention and the right to communicate with that office. It was further alleged by the Applicant that the authorities of the Commonwealth of Virginia had not advised the Paraguayan consular officers, who were therefore only able to render assistance to him from 1996, when the Paraguayan Government learned of the case by its own means. Paraguay asked the Court to adjudge and declare that the United States of America had violated its international legal obligations towards Paraguay and that the latter was entitled to "restitution in kind".

The same day, 3 April 1998, Paraguay also submitted a request for the indication of provisional measures to ensure that the national concerned was not executed pending a decision by the Court. At a public hearing on 9 April 1998, the Court made an Order on the request for the indication of provisional measures submitted by Paraguay. The Court unanimously found that the United States of America should take all measures at its disposal to ensure that the Paraguayan national concerned was not executed pending the decision by the Court. By an Order the same day, the Vice-President, acting as President, having regard to the Court's Order for the indication of provisional measures and the agreement of the Parties, fixed the time-limits for the filing of the Memorial and the Counter-Memorial. Paraguay filed its Memorial on 9 October 1998.

By letter of 2 November 1998, Paraguay indicated that it wished to discontinue the proceedings with prejudice. The United States of America concurred in the discontinuance on 3 November. On 10 November 1998, the Court therefore made an Order placing on record the discontinuance and directing the case to be removed from the List.

1.77 *Request for interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections *(Nigeria v. Cameroon)*

On 28 October 1998, the Republic of Nigeria filed in the Registry of the Court an Application instituting proceedings against the Republic of Cameroon, whereby it requested the Court to interpret the Judgment on the preliminary objections delivered on 11 June 1998 in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria* (see No. 1.72 above). In its Request for an interpretation, Nigeria submitted that one aspect of the case concerning the *Land and Maritime Boundary* still before the Court was the alleged responsibility of Nigeria for certain incidents said by Cameroon to have occurred at various places in Bakassi and Lake Chad and also along the length of the frontier between those two regions. Nigeria held that, as Cameroon had not provided full information on those incidents, the Court had not been able to specify which incidents were to be considered further as part of the merits of the case. Nigeria considered that the meaning and scope of the Judgment required interpretation. The Court was asked to interpret the Judgment as suggested by the Applicant.

After the filing of written observations by Cameroon on Nigeria's Request for interpretation, the Court did not deem it necessary to invite the Parties to furnish further written or oral explanations. On 25 March 1999, the Court delivered a Judgment, in which it concluded that, in its Judgment of June 1998, it had already dealt with certain of the submissions presented by Nigeria at the end of its Request for interpretation, and that the other submissions presented by Nigeria endeavoured to remove from the Court's consideration elements of law and fact which the Court, in its 1998 Judgment, had already authorized Cameroon to present, or which Cameroon had not yet put forward. In any event, the Court concluded that it could not entertain Nigeria's submissions. Accordingly, it declared Nigeria's Request for interpretation inadmissible.

98. *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*

On 2 November 1998, the Republic of Indonesia and Malaysia jointly notified the Court of a Special Agreement between the two States, signed at Kuala Lumpur on 31 May 1997 and having entered into force on 14 May 1998. In accordance with that Special Agreement, they requested the Court to determine, on the basis of the treaties, agreements and any other evidence furnished by them, to which of the two States sovereignty over Pulau Ligitan and Pulau Sipadan belonged.

Shortly after the filing by the Parties of the Memorials, Counter-Memorials and Replies, the Philippines, on 13 March 2001, requested permission to intervene in the case. In its Application, the Philippines indicated that the object of its request was to

> "preserve and safeguard the historical and legal rights [of its Government] arising from its claim to dominion and sovereignty over the territory of North Borneo, to the extent that those rights [were] affected, or [might] be affected, by a determination of the Court of the question of sovereignty over Pulau Ligitan and Pulau Sipadan".

The Philippines specified that it was not seeking to become a party in the case. Further, the Philippines specified that "[its] Constitution . . . as well as its legislation ha[d] laid claim to dominion and sovereignty over North Borneo". The Application for permission to intervene drew objections from Indonesia and Malaysia. Among other things, Indonesia stated that the Application should be rejected on the ground that it had not been filed in time and that the Philippines had not shown that it had an interest of a legal nature at issue in the case. Meanwhile, Malaysia added that the object of the Application was inadequate. The Court therefore decided to hold public sittings to hear the Philippines, Indonesia and Malaysia, before ruling on whether to grant the Application for permission to intervene. Following those sittings, the Court, on 23 October 2001, delivered a Judgment by which it rejected the Application by the Philippines for permission to intervene.

After the holding of public sittings in June 2002, the Court delivered its Judgment on the merits on 17 December 2002. In that Judgment, it began by recalling the complex historical background of the dispute between the Parties. It then examined the titles invoked by them. Indonesia asserted that its claim to sovereignty over the islands was based primarily on a conventional title, the 1891 Convention between Great Britain and the Netherlands.

After examining the 1891 Convention, the Court found that, when read in the context and in the light of its object and purpose, that instrument could not be interpreted as establishing an allocation line determining sovereignty over the islands out to sea, to the east of the island of Sebatik, and that as a result the Convention did not constitute a title on which Indonesia could found its claim to Ligitan and Sipadan. The Court stated that that conclusion was confirmed both by the *travaux préparatoires* and by the subsequent conduct of the parties to the Convention. The Court further held that the cartographic material submitted by the Parties in the case did not contradict that conclusion.

Having rejected that argument by Indonesia, the Court turned to consideration of the other titles on which Indonesia and Malaysia claimed to found their sovereignty over the islands of Ligitan and Sipadan. The Court sought to determine whether Indonesia or Malaysia obtained a title to the islands by succession. In that connection, it did not accept Indonesia's contention that it retained title to the islands as successor to the Netherlands, which had allegedly acquired it through contracts concluded with the Sultan of Bulungan, the original title-holder. Nor did the Court accept Malaysia's contention that it had acquired sovereignty over the islands of Ligitan and Sipadan following a series of alleged transfers of the title originally held by the former sovereign, the Sultan of Sulu, that title having allegedly passed in turn to Spain, to the United States, to Great Britain on behalf of the State of North Borneo, to the United Kingdom and finally to Malaysia.

Having found that neither of the Parties had a treaty-based title to Ligitan and Sipadan, the Court next considered the question whether Indonesia or Malaysia could hold title to the disputed islands by virtue of the *effectivités* cited by them. In that regard, the Court determined whether the Parties' claims to sovereignty were based on activities evidencing an actual, continued exercise of authority over the islands, i.e., the intention and will to act as sovereign.

In that connection, Indonesia cited a continuous presence of the Dutch and Indonesian navies in the vicinity of Ligitan and Sipadan. It added that the waters around the islands had traditionally been used by Indonesian fishermen. In respect of the first of those arguments, it was the opinion of the Court that from the facts relied upon in the case "it [could] not be deduced . . . that the naval authorities concerned considered Ligitan and Sipadan and the surrounding waters to be under the sovereignty of the Netherlands or Indonesia". As for the second argument, the Court considered that "activities by private persons [could] not be seen as *effectivités* if they [did] not take place on the basis of official regulations or under governmental authority".

Having rejected Indonesia's arguments based on its *effectivités*, the Court turned to the consideration of the *effectivités* relied on by Malaysia. As evidence of its effective administration of the islands, Malaysia cited *inter alia* the measures taken by the North Borneo authorities to regulate and control the collecting of turtle eggs on Ligitan and Sipadan, an activity of some economic significance in the area at the time. It relied on the Turtle Preservation Ordinance of 1917 and maintained that the Ordinance "[had been] applied until the 1950s at least" in the area of the two disputed islands. It further invoked the fact that the authorities of the colony of North Borneo had constructed a lighthouse on Sipadan in 1962 and another on Ligitan in 1963, that those lighthouses still existed and that they had been maintained by Malaysian authorities since its independence. The Court noted that

> "the activities relied upon by Malaysia . . . [we]re modest in number but they [we]re diverse in character and include[d] legislative, administrative and quasi-judicial acts. They cover[ed] a considerable period of time and show[ed] a pattern revealing an intention to exercise State functions in respect of the two islands in the context of the administration of a wider range of islands."

The Court further stated that "at the time when these activities were carried out, neither Indonesia nor its predecessor, the Netherlands, [had] ever expressed its disagreement or protest".

The Court concluded, on the basis of the above-mentioned *effectivités*, that sovereignty over Pulau Ligitan and Pulau Sipadan belonged to Malaysia.

179. *Ahmadou Sadio Diallo*
(Republic of Guinea v. Democratic Republic of the Congo)

On 28 December 1998, Guinea filed an Application instituting proceedings against the Democratic Republic of the Congo (DRC) in respect of a dispute concerning "serious violations of international law" alleged to have been committed upon the person of Mr. Ahmadou Sadio Diallo, a Guinean national. In its Application, Guinea maintained that

> "Mr. Ahmadou Sadio Diallo, a businessman of Guinean nationality, was unjustly imprisoned by the authorities of the Democratic Republic of the Congo, after being resident in that State for thirty-two (32) years, despoiled of his sizable investments, businesses, movable and immovable property and bank accounts, and then expelled."

Guinea added:

> "[t]his expulsion came at a time when Mr. Ahmadou Sadio Diallo was pursuing recovery of substantial debts owed to his businesses [Africom-Zaire

> and Africontainers-Zaire] by the [Congolese] State and by oil companies established in its territory and of which the State is a shareholder".

To found the jurisdiction of the Court, Guinea invoked in the Application the declarations whereby the two States have recognized the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute of the Court.

On 3 October 2002, the DRC raised preliminary objections in respect of the admissibility of Guinea's Application. In its Judgment of 24 May 2007 on these preliminary objections, the Court declared the Application of the Republic of Guinea to be admissible "in so far as it concerns protection of Mr. Diallo's rights as an individual" and "in so far as it concerns protection of [his] direct rights as *associé* in Africom-Zaire and Africontainers-Zaire". However, the Court declared the Application of the Republic of Guinea to be inadmissible "in so far as it concerns protection of Mr. Diallo in respect of alleged violations of rights of Africom-Zaire and Africontainers-Zaire".

In its Judgment of 30 November 2010 on the merits, the Court found that, in respect of the circumstances in which Mr. Diallo had been expelled on 31 January 1996, the DRC had violated Article 13 of the International Covenant on Civil and Political Rights and Article 12, paragraph 4, of the African Charter on Human and Peoples' Rights. The Court also found that, in respect of the circumstances in which Mr. Diallo had been arrested and detained in 1995-1996 with a view to his expulsion, the DRC had violated Article 9, paragraphs 1 and 2, of the Covenant and Article 6 of the African Charter. The Court further decided that "the Democratic Republic of the Congo [was] under obligation to make appropriate reparation, in the form of compensation, to the Republic of Guinea for the injurious consequences of the violations of international obligations referred to in subparagraphs (2) and (3) [of the operative part]", namely the unlawful arrests, detentions and expulsion of Mr. Diallo. In addition, the Court found that the DRC had violated Mr. Diallo's rights under Article 36, paragraph 1 *(b)*, of the Vienna Convention on Consular Relations. It did not however order the DRC to pay compensation for this violation. In the same Judgment, the Court rejected all other submissions by Guinea relating to the arrests and detentions of Mr. Diallo, including the contention that he had been subjected to treatment prohibited by Article 10, paragraph 1, of the Covenant during his detentions. Furthermore, the Court found that the DRC had not violated Mr. Diallo's direct rights as an *associé* in the companies Africom-Zaire and Africontainers-Zaire. Finally, the Court decided, with respect to the question of compensation owed by the DRC to Guinea, that "failing agreement between the Parties on this matter within six months from the date of [the said] Judgment, [this] question . . . shall be settled by the Court".

The time-limit of six months thus fixed by the Court having expired on 30 May 2011 without an agreement being reached between the Parties on the question of compensation due to Guinea, it fell to the Court to determine the amount of compensation to be awarded to Guinea as a consequence of the unlawful arrests, detentions and expulsion of Mr. Diallo by the DRC, pursuant to the findings of the Court set out in its Judgment of 30 November 2010. By an Order of 20 September 2011, the Court fixed 6 December 2011 and 21 February 2012 as the respective time-limits for the filing of the Memorial of Guinea and the Counter-Memorial of the DRC on the question of compensation due to Guinea. The Memorial and the Counter-Memorial were duly filed within the time-limits thus prescribed. The Court delivered its Judgment on 19 June 2012.

In its Memorial, Guinea valued the mental and moral damage suffered by Mr. Diallo at US$250,000. The Court considered various factors in its assessment of that injury, notably the arbitrary nature of Mr. Diallo's arrests and detentions, the unjustifiably long period of his detention, the unsubstantiated accusations of which he was the victim, his wrongful expulsion from a country where he had resided for 32 years and where he had engaged in significant business activities and the link between his expulsion and the fact that he had attempted to recover debts which he believed were owed to his companies by the Zairean State or companies in which that State held a substantial portion of the capital. It also took account of the fact that there was no evidence that Mr. Diallo had been mistreated. On the basis of equitable considerations, the Court found that the amount of US$85,000 would provide appropriate compensation for the non-material injury suffered by Mr. Diallo.

In its Memorial, Guinea also valued the loss of personal property at US$550,000. The Court found that Guinea had failed to prove the extent of the loss of personal property alleged to have been suffered by Mr. Diallo and the extent to which any such loss was caused by the DRC's unlawful conduct. Nevertheless, taking account of the fact that Mr. Diallo had lived and worked in the territory of the DRC for over 30 years, during which time he surely accumulated personal property, and on the basis of considerations of equity, the Court considered that the sum of US$10,000 would provide appropriate compensation for the material injury suffered by Mr. Diallo.

Finally, in its Memorial, Guinea valued the loss of earnings suffered by Mr. Diallo during his unlawful detention and following his unlawful expulsion at almost US$6.5 million. The Court ruled that Guinea had failed to prove the existence of any such loss. Consequently, it awarded no compensation on that basis.

The Court concluded that the total sum to be awarded to Guinea was thus US$95,000, to be paid by 31 August 2012. It decided that, should payment be delayed, post-judgment interest on the principal sum due would accrue as from 1 September 2012 at an annual rate of 6 per cent. The Court ruled that each Party would bear its own costs.

7.89. *LaGrand (Germany v. United States of America)*

On 2 March 1999, the Federal Republic of Germany filed in the Registry of the Court an Application instituting proceedings against the United States of America in a dispute concerning alleged violations of the Vienna Convention on Consular Relations of 24 April 1963. Germany stated that, in 1982, the authorities of the State of Arizona had detained two German nationals, Karl and Walter LaGrand, who were tried and sentenced to death without having been informed of their rights, as is required under Article 36, paragraph 1 *(b)*, of the Vienna Convention. Germany also alleged that the failure to provide the required notification precluded Germany from protecting its nationals' interest provided for by Articles 5 and 36 of the Vienna Convention at both the trial and the appeal level in the United States courts. Germany asserted that although the two nationals, finally with the assistance of German consular officers, did claim violations of the Vienna Convention before the federal courts, the latter, applying the municipal law doctrine of "procedural default", decided that, because the individuals in question had not asserted their rights in the previous legal proceedings at State level, they could not assert them in the federal proceedings. In its Application, Germany based the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article I of the Optional Protocol of the Vienna Convention on Consular Relations.

Germany accompanied its Application by an urgent request for the indication of provisional measures, requesting the Court to indicate that the United States should take "all measures at its disposal to ensure that [one of its nationals, whose date of execution had been fixed at 3 March 1999] [was] not executed pending final judgment in the case . . .". On 3 March 1999, the Court delivered an Order for the indication of provisional measures calling upon the United States of America, among other things, to "take all measures at its disposal to ensure that [the German national] [was] not executed pending the final decision in [the] proceedings". However, the two German nationals were executed by the United States.

Public hearings in the case were held from 13 to 17 November 2000. In its Judgment of 27 June 2001, the Court began by outlining the history of the dispute and then examined certain objections of the United States of America to the Court's jurisdiction and to the admissibility of Germany's submissions. It found that it had jurisdiction to deal with all Germany's submissions and that they were admissible.

Ruling on the merits of the case, the Court observed that the United States did not deny that, in relation to Germany, it had violated Article 36, paragraph 1 *(b)* of the Vienna Convention, which required the competent authorities of the United States to inform the LaGrands of their right to have the Consulate of Germany notified of their arrest. It added that, in the case concerned, that breach had led to the violation of paragraph 1 *(a)* and paragraph 1 *(c)* of that Article, which dealt respectively with mutual rights of communication and access of consular officers and their nationals, and the right of consular officers to visit their nationals in prison and to arrange for their legal representation. The Court further stated that the United States had not only breached its obligations to Germany as a State party to the Convention, but also that there had been a violation of the individual rights of the LaGrands under Article 36, paragraph 1, which rights could be relied on before the Court by their national State.

The Court then turned to Germany's submission that the United States, by applying rules of its domestic law, in particular the doctrine of "procedural default" had violated Article 36, paragraph 2, of the Convention. That provision required the United States to "enable full effect to be given to the purposes for which the rights accorded [under Article 36] [were] intended". The Court stated that, in itself, the procedural default rule did not violate Article 36. The problem arose, according to the Court, when the rule in question did not allow the detained individual to challenge a conviction and sentence by invoking the failure of the competent national authorities to comply with their obligations under Article 36, paragraph 1. The Court concluded that, in the present case, the procedural default rule had the effect of preventing Germany from assisting the LaGrands in a timely fashion as provided for by the Convention. Under those circumstances, the Court held that in the present case the rule referred to violated Article 36, paragraph 2.

With regard to the alleged violation by the United States of the Court's Order of 3 March 1999 indicating provisional measures, the Court pointed out that it was the first time it had been called upon to determine the legal effects of such orders made under Article 41 of its Statute — the interpretation of which had been the subject of extensive controversy in the literature. After interpreting Article 41, the Court found that such orders did have binding effect. In the present case, the Court concluded that its Order of 3 March 1999 "was not a mere exhortation" but "created a legal obligation for the United States". The Court then went on to consider the measures taken by the United States to implement the Order concerned and concluded that it had not complied with it.

With respect to Germany's request seeking an assurance that the United States would not repeat its unlawful acts, the Court took note of the fact that the latter had repeatedly stated in all phases of those proceedings that it was implementing a vast and detailed programme in order to ensure compliance, by its competent authorities, with Article 36 of the Convention and concluded that such a commitment must be regarded as meeting the request made by Germany. Nevertheless, the Court added that if the United States, notwithstanding that commitment, were to fail again in its obligation of consular notification to the detriment of German nationals, an apology would not suffice in cases where the individuals concerned had been subjected to prolonged detention or convicted and sentenced to severe penalties. In the case of such a conviction and sentence, it would be incumbent upon the United States, by whatever means it chose, to allow the review and reconsideration of the conviction and sentence taking account of the violation of the rights set forth in the Convention.

131-140. *Legality of Use of Force (Serbia and Montenegro v. Belgium) (Serbia and Montenegro v. Canada) (Serbia and Montenegro v. France) (Serbia and Montenegro v. Germany) (Serbia and Montenegro v. Italy) (Serbia and Montenegro v. Netherlands) (Serbia and Montenegro v. Portugal) (Yugoslavia v. Spain) (Serbia and Montenegro v. United Kingdom) (Yugoslavia v. United States of America)*[8]

On 29 April 1999, the Federal Republic of Yugoslavia filed in the Registry of the Court Applications instituting proceedings against Belgium, Canada, France, Germany, Italy, Netherlands, Portugal, Spain, United Kingdom and United States of America for alleged violations of their obligation not to use force against another State. In its Applications against Belgium, Canada, Netherlands, Portugal, Spain and United Kingdom, Yugoslavia referred, as a basis for the jurisdiction of the Court, to Article 36, paragraph 2, of the Statute of the Court and to Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948. Yugoslavia also relied upon Article IX of that Convention in its Applications against France, Germany, Italy and United States, but also relied on Article 38, paragraph 5, of the Rules of Court.

On 29 April 1999, Yugoslavia also submitted, in each case, an Application for the indication of provisional measures to ensure that the respondent State concerned "cease immediately its acts of use of force and . . . refrain from any act of threat or use of force" against Yugoslavia. After hearings on the provisional measures from 10 to 12 May 1999, the Court delivered its decision in each of the cases on 2 June 1999. In two of them (Yugoslavia *v.* Spain and Yugoslavia *v.* United States of America), the Court, rejecting the request for the indication of provisional measures, concluded that it manifestly lacked jurisdiction and consequently ordered that the cases be removed from the List. In the eight other cases, the Court declared that it lacked prima facie jurisdiction (one of the prerequisites for the indication of provisional measures) and that it therefore could not indicate such measures.

In each of the eight cases which remained on the List, Yugoslavia filed a Memorial in January 2000. In July 2000, the Respondents filed preliminary objections to jurisdiction and admissibility within the time-limit laid down for the filing of their Counter-Memorials. Consequently, pursuant to Article 79, paragraph 3, of the Rules of Court adopted on 14 April 1978, the proceedings on the merits in each of the cases were suspended. By Orders of 8 September 2000, the Vice-President fixed 5 April 2001 as the time-limit for the submission by Yugoslavia, in each case, of a written statement containing its observations on the preliminary objections.

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[8] The titles of the eight cases remaining on the Court's List were modified following the change in the name of Yugoslavia on 4 February 2003. In the following summary, the name "Yugoslavia" has been retained with respect to all proceedings before this date.

In January 2001 and February 2002, Yugoslavia, referring to "dramatic" and "ongoing" changes in the country, which would have put those cases "in a quite different perspective", as well as to the decision to be taken by the Court in another case involving Yugoslavia, requested the Court "for a stay of proceedings or for an extension by 12 months of the time-limit for the submission of observations on the preliminary objections raised by ... [the respondent State]" in each case. In 2001 and 2002, the respondent States indicated that they were not opposed to a stay of proceedings or to an extension of the time-limit for the filing of the observations and submissions of Yugoslavia on their preliminary objections. Consequently, the Court twice extended by one year the time-limits originally fixed for the submission by Yugoslavia of the written statements containing its observations and submissions on the preliminary objections raised by the eight respondent States. On 20 December 2002, Yugoslavia filed that written statement in each of the eight cases.

By subsequent letters addressed to the Court in January and February 2003, the eight respondent States expressed their views concerning the written statement of Serbia and Montenegro. In reply, by a letter of 28 February 2003, Serbia and Montenegro informed the Court that its written observations filed on 20 December 2002 were not to be interpreted as a notice of discontinuance of the proceedings; it indicated that their object was simply to request the Court to decide on its own jurisdiction on the basis of the new elements to which the Court's attention had been drawn.

Serbia and Montenegro availed itself of the right under Article 31, paragraph 2, of the Statute to choose a judge *ad hoc*, during the phase of the cases devoted to the request for the indication of provisional measures. At that time, some of the respondent States also chose judges *ad hoc*. In the subsequent phase of the proceedings, Belgium, Canada and Italy requested the extension of the appointments of their judges *ad hoc* and Portugal indicated its intention to appoint a judge *ad hoc*. Serbia and Montenegro objected on the ground that the respondent States were in the same interest. Following a meeting held by the President with the representatives of the Parties on 12 December 2003, the Registrar informed the Parties that the Court had decided, pursuant to Article 31, paragraph 5, of its Statute, taking into account the presence on the Bench of judges of British, Dutch and French nationality, that the judges *ad hoc* chosen by the respondent States should not sit during the then current phase of the procedure in these cases; and that that decision did not in any way prejudice the question whether, if the Court should reject the preliminary objections of the respondents, judges *ad hoc* chosen by them might sit in subsequent stages of the said cases.

At the meeting of 12 December 2003, the question was also raised of a possible joinder of the proceedings. By the Registrar's letters of 23 December 2003, the Parties were informed that the Court had decided that the proceedings should not be joined. Although there were thus eight separate proceedings, instituted by eight separate Applications, the position of the Applicant in each case was the same, and its responses to the eight sets of preliminary objections proceeded on substantially the same basis. Consequently, the Court organized the conduct of the oral proceedings in this phase of the case in such a manner as to avoid unnecessary duplication of arguments. Oral proceedings were held from 19 to 23 April 2004.

In its Judgments of 15 December 2004, the Court observed that the question whether Serbia and Montenegro was or was not a State party to the Statute of the Court at the time of the institution of the proceedings was fundamental; for if Serbia and Montenegro were not such a party, the Court would not be open to it, unless it met the conditions prescribed in Article 35, paragraph 2, of the Statute. The Court therefore had to examine whether the Applicant met the conditions for access to it laid down in Articles 34 and 35 of the Statute before examining the issues relating to the conditions laid down in Articles 36 and 37 of the Statute.

The Court pointed out that there was no doubt that Serbia and Montenegro was a State for the purpose of Article 34, paragraph 1, of the Statute. However, the objection had been raised by certain Respondents that, at the time when the Application was filed, Serbia and Montenegro did not meet the conditions set down in Article 35, paragraph 1, of the Statute, because it was not a Member of the United Nations at the relevant time. After recapitulating the sequence of events relating to the legal position of the applicant State vis-à-vis the United Nations, the Court concluded that the legal situation that obtained within the United Nations during the period 1992-2000 concerning the status of the Federal Republic of Yugoslavia, following the break-up of the Socialist Federal Republic of Yugoslavia, had remained ambiguous and open to different assessments. This situation had come to an end with a new development in 2000. On 27 October of that year, the Federal Republic of Yugoslavia requested admission to membership in the United Nations, and on 1 November, by General Assembly resolution 55/12, it was so admitted. The Applicant thus had the status of membership in the Organization as from 1 November 2000. However, its admission to the United Nations did not have, and could not have had, the effect of dating back to the time when the Socialist Federal Republic of Yugoslavia broke up and disappeared. The Court therefore concluded that the Applicant thus was not a Member of the United Nations, and in that capacity a State party to the Statute of the International Court of Justice, at the time of filing its Application to institute the proceedings in each of the cases before the Court on 29 April 1999. As it had not become a party to the Statute on any other basis, the Court was not open to it at that time under Article 35, paragraph 1, of the Statute.

The Court then considered whether it might have been open to the Applicant under paragraph 2 of Article 35. It noted that the words "treaties in force" in that paragraph were to be interpreted as referring to treaties which were in force at the time that the Statute itself came into force, and that consequently, even assuming that the Applicant was a party to the Genocide Convention when instituting proceedings, Article 35, paragraph 2, of the Statute did not provide it with a basis for access to the Court under Article IX of that Convention, since the Convention only entered into force on 12 January 1951, after the entry into force of the Statute.

In the cases against Belgium and the Netherlands, the Court finally examined the question whether Serbia and Montenegro was entitled to invoke the dispute settlement convention it had concluded with each of those States in the early 1930s as a basis of jurisdiction in those cases. The question was whether the conventions dating from the early 1930s, which had been concluded prior to the entry into force of the Statute, might rank as a "treaty in force" for purposes of Article 35, paragraph 2, and hence provide a basis of access. The Court first recalled that Article 35 of the Statute of the Court concerns access to the present Court and not to its predecessor, the Permanent Court of International Justice (PCIJ). It then observed that the conditions for transfer of jurisdiction from the PCIJ to the present Court are governed by Article 37 of the Statute. The Court noted that Article 37 applies only as between parties to the Statute under Article 35, paragraph 1. As it had already found that Serbia and Montenegro was not a party to the Statute when instituting proceedings, the Court accordingly found that Article 37 could not give it access to the Court under Article 35, paragraph 2, on the basis of the Conventions dating from the early 1930s, irrespective of whether or not those instruments were in force on 29 April 1999, the date of the filing of the Application.

At the end of its reasoning, the Court finally recalled that, irrespective of whether it has jurisdiction over a dispute, the parties "remain in all cases responsible for acts attributable to them that violate the rights of other States".

1.91-1.93 *Armed Activities on the Territory of the Congo*
(Democratic Republic of the Congo v. Burundi)
(Democratic Republic of the Congo v. Rwanda)
(Democratic Republic of the Congo v. Uganda)

On 23 June 1999, the Democratic Republic of the Congo (DRC) filed in the Registry of the Court Applications instituting proceedings against Burundi, Uganda and Rwanda "for acts of armed aggression committed ... in flagrant breach of the United Nations Charter and of the Charter of the Organization of African Unity". In addition to the cessation of the alleged acts, Congo sought reparation for acts of intentional destruction and looting and the restitution of national property and resources appropriated for the benefit of the respective respondent States.

In its Applications instituting proceedings against Burundi and Rwanda, the DRC referred, as bases for the Court's jurisdiction, to Article 36, paragraph 1, of the Statute, the New York Convention of 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation and, lastly, Article 38, paragraph 5, of the Rules of Court. However, the Government of the DRC informed the Court on 15 January 2001 that it intended to discontinue the proceedings instituted against Burundi and Rwanda, stating that it reserved the right to invoke subsequently new grounds of jurisdiction of the Court. The two cases were therefore removed from the List on 30 January 2001. (For the case brought subsequently by the DRC against Rwanda on 28 May 2002, see No. 1.102 below.)

In the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, the DRC founded the jurisdiction of the Court on the declarations of acceptance of the compulsory jurisdiction of the Court made by the two States. On 19 June 2000, the DRC filed a request for the indication of provisional measures to put a stop to all military activity and violations of human rights and of the sovereignty of the DRC by Uganda. On 1 July 2000, the Court ordered each of the two Parties to prevent and refrain from any armed action which might prejudice the rights of the other Party or aggravate the dispute, to take all measures necessary to comply with all of their obligations under international law and also to ensure full respect for fundamental human rights and for the applicable provisions of humanitarian law.

Uganda subsequently filed a Counter-Memorial containing three counter-claims. By an Order of 29 November 2001, the Court found that two of the counter-claims (acts of aggression allegedly committed by the Congo against Uganda; and attacks on Ugandan diplomatic premises and personnel in Kinshasa and on Ugandan nationals for which the Congo is alleged to be responsible) were admissible as such and formed part of the proceedings. It also directed the submission of a Reply by the Congo and a Rejoinder by Uganda relating to the claims of both Parties in the proceedings. Those pleadings were filed within the time-limits laid down by the Court.

By an Order of 29 January 2003, the Court authorized the submission by the DRC of an additional pleading relating solely to the counter-claims submitted by Uganda, which was duly filed on 28 February 2003.

Following oral proceedings in April 2005, the Court handed down its Judgment on the merits on 19 December 2005. It began by noting that it was aware of the complex and tragic situation which had long prevailed in the Great Lakes region and of the suffering of the local population. It observed that the instability in the DRC in particular had had negative security implications for Uganda and several other neighbouring States. It recalled, however, that its task was to respond, on the basis of international law, to the particular legal dispute brought before it.

The Court first dealt with the question of the invasion of the DRC by Uganda. After examining the materials submitted to it by the Parties, the Court found that in the period preceding August 1998, the DRC had not objected to the presence or activities of Ugandan troops in its eastern border area. The two countries had agreed, among other things, that their respective armies would "co-operate in order to insure security and peace along the common border". However, the Court drew attention to the fact that the consent that had been given to Uganda to place its forces in the DRC, and to engage in military operations, was not an open-ended consent. It was limited, in terms of objectives and geographic location, to actions directed at stopping the rebels who were operating across the common border. It did not constitute a consent to all that was to follow.

The Court carefully examined the various treaties directed to achieving and maintaining a ceasefire, the withdrawal of foreign forces and the stabilization of relations between the DRC and Uganda. It concluded that none of those instruments constituted consent by the DRC to the presence of Ugandan troops on its territory (save for the limited exception regarding the border region of the Ruwenzori Mountains contained in the Luanda Agreement). The Court also rejected Uganda's claim that its use of force, where not covered by consent, was an exercise of self-defence, finding that the preconditions for self-defence did not exist. Indeed, the unlawful military intervention by Uganda was of such magnitude and duration that the Court considered it to be a grave violation of the prohibition on the use of force expressed in Article 2, paragraph 4, of the United Nations Charter.

The Court also found that, by actively extending military, logistic, economic and financial support to irregular forces operating on the territory of the DRC, the Republic of Uganda had violated the principle of non-use of force in international relations and the principle of non-intervention.

The Court then moved to the question of occupation and of the violations of human rights and humanitarian law. It observed first that, under customary international law, as reflected in Article 42 of the Hague Regulations of 1907, territory is considered to be occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised.

Having concluded that Uganda was the occupying power in Ituri at the relevant time, the Court stated that, as such, it was under an obligation, according to Article 43 of the 1907 Hague Regulations, to take all measures in its power to restore and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force in the DRC. This had not been done. The Court also considered that it had credible evidence sufficient to conclude that UPDF (Uganda Peoples' Defence Forces) troops had committed violations of international humanitarian law and human rights law. It found that these violations were attributable to Uganda.

The third issue that the Court was called upon to examine concerned the alleged exploitation of Congolese natural resources by Uganda. In this regard, the Court considered that it had credible and persuasive evidence to conclude that officers and soldiers of the UPDF, including the most high-ranking officers, had been involved in the looting, plundering and exploitation of the DRC's natural resources and that the military authorities had not taken any measures to put an end to these acts. Uganda was responsible both for the conduct of the UPDF as a whole and for the conduct of individual soldiers and officers of the UPDF in the DRC. This was so even when UPDF officers and soldiers had acted contrary to instructions given or had exceeded their authority. The Court found, on the other hand, that it did not have at its disposal credible evidence to prove that there was a governmental policy on the part of Uganda directed at the exploitation of natural resources of the DRC or that Uganda's military intervention was carried out in order to obtain access to Congolese resources.

In respect of the first counter-claim of Uganda (see above concerning the Order of 29 November 2011), the Court found that Uganda had not produced sufficient evidence to show that the DRC had provided political and military support to anti-Ugandan rebel groups operating in its territory, or even to prove that the DRC had breached its duty of vigilance by tolerating anti-Ugandan rebels on its territory. The Court thus rejected the first counter-claim submitted by Uganda in its entirety.

As for the second counter-claim of Uganda (see above concerning the Order of 29 November 2011), the Court first declared inadmissible the part of that claim relating to the alleged maltreatment of Ugandan nationals not enjoying diplomatic status at Ndjili International Airport. Regarding the merits of the claim, it found, on the other hand, that there was sufficient evidence to prove that there were attacks against the Embassy and acts of maltreatment against Ugandan diplomats at Ndjili International Airport. Consequently, it found that the DRC had breached its obligations under the Vienna Convention on Diplomatic Relations. The removal of property and archives from the Ugandan Embassy was also in violation of the rules of international law on diplomatic relations.

The Court noted in its Judgment that the nature, form and amount of compensation owed by each Party had been reserved and would only be submitted to the Court should the Parties be unable to reach agreement on the basis of the Judgment just rendered by the Court. Following the delivery of the Judgment, the Parties have regularly informed the Court on the progress of negotiations. On 8 September 2007, the President of the Republic of Uganda and the President of the DRC concluded an Agreement on Bilateral Co-operation, Article 8 of which provided for the establishment of an *ad hoc* committee, composed of not more than seven members nominated by each Party, to study the Judgment rendered by the Court and to make recommendations concerning reparation. At a meeting on 25 May 2010 in Kampala, Uganda, the two States named their respective members of the *ad hoc* committee and agreed that that committee would adopt a work plan, rules of procedure and determine timeframes for completing its work. In addition, the DRC presented to the Ugandan delegation a document in which it provided its valuation of the damages it had suffered. In September 2012, the DRC and Uganda concluded an agreement establishing a work plan for the presentation of evidence in support of their respective claims.

184. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia and Montenegro)*

On 2 July 1999, Croatia filed an Application against the Federal Republic of Yugoslavia (FRY) "for violations of the Convention on the Prevention and Punishment of the Crime of Genocide". As basis for the Court's jurisdiction, Croatia invoked Article IX of that Convention to which, according to it, both Croatia and Yugoslavia were parties. The Memorial of Croatia was filed on 1 March 2001 within the time-limit fixed by the Court for that purpose. On 11 September 2002, Yugoslavia filed preliminary objections to the jurisdiction of the Court and to the admissibility of the claims made by Croatia and, pursuant to Article 79, paragraph 3, of the Rules of Court adopted on 14 April 1978, the proceedings on the merits were suspended.

The Court delivered its Judgment on the preliminary objections on 18 November 2008. It began by considering the first preliminary objection relating to the question of Serbia's access to the Court, taking particular account of its 2004 decision that Yugoslavia did not have access to the Court in 1999 when it filed its Applications against the NATO countries in the cases concerning the *Legality of Use of Force* (see Nos. 181-190 above). The Court observed that, while its jurisdiction should normally be assessed on the date of the filing of the act instituting proceedings, it had also shown flexibility in certain situations in which the conditions governing the Court's jurisdiction were not fully satisfied when proceedings were initiated but were subsequently satisfied, before the Court ruled on its jurisdiction. It concluded in this respect that the Court was open to the FRY as of 1 November 2000, when the latter was readmitted as a Member of the United Nations and *ipso facto* became a party to the Statute of the Court. The Court reasoned, therefore, that it was in a position to uphold its jurisdiction if it found that Serbia was bound by Article IX of the Genocide Convention — the instrument invoked by Croatia as the basis for the Court's jurisdiction — on 2 July 1999, the date on which the proceedings were instituted, and that it remained bound by that Article until 1 November 2000.

The title of the case was amended following the change in the name of Yugoslavia on 4 February 2003. In the following summary, the name "Yugoslavia" has been retained with respect to all proceedings prior to this date. In addition, on 3 June 2006 Montenegro declared its independence from Serbia (see *supra* note 29, p. 159). The following summary thus uses the name "Yugoslavia" with respect to all proceedings before 4 February 2003, "Serbia and Montenegro" with respect to all events subsequent to that date and prior to 3 June 2006, and "Republic of Serbia" or "Serbia" with respect to all events subsequent to 3 June 2006.

In this connection, the Court noted that, by a declaration of 27 April 1992 and a Note of the same date, the FRY stated that it would "continue to fulfil all the rights conferred to, and obligations assumed by, the Socialist Federal Republic of Yugoslavia [SFRY] in international relations, including its membership in all international organizations and participation in international treaties ratified or acceded to by Yugoslavia". In the light of the text of the declaration and Note of 27 April 1922, and of Yugoslavia's consistent conduct throughout the years 1992-2001, the Court ruled that the declaration and the Note had the effect of a notification of succession by the FRY to the SFRY in relation to the Genocide Convention, including Article IX thereof, which provided for the Court's jurisdiction. It concluded that it had, on the date on which the proceedings were instituted by Croatia, jurisdiction to entertain the case on the basis of Article IX, and that that situation had continued at least until 1 November 2000, the date on which Serbia and Montenegro became a Member of the United Nations and thus a party to the Statute of the Court. Having concluded that Serbia had acquired the status of party to the Court's Statute on 1 November 2000, that it was bound by the Genocide Convention, including Article IX thereof, on the date on which the proceedings were instituted and that it remained so until at least 1 November 2000, the Court rejected Serbia's first preliminary objection.

The Court then considered the second preliminary objection of Serbia that "the claims based on acts and omissions which took place prior to 27 April 1992" — that is to say before Serbia existed as a State — were beyond its jurisdiction and inadmissible. The Court found that such a preliminary objection raised the question of the applicability of the obligations under the Genocide Convention to the FRY before 27 April 1992 and whether consequences should be drawn with regard to the responsibility of the FRY for those same facts under the general rules of State responsibility. The Court stated that it could not determine these questions without to some degree determining issues properly pertaining to the merits of the case, and that since the objection raised was not exclusively preliminary in character, it would have to be dealt with at the merits stage, when the Court would be in possession of greater evidence.

Lastly, the Court addressed Serbia's third preliminary objection that claims relating to the prosecution of certain persons within the jurisdiction of Serbia, the provision of information regarding the whereabouts of missing Croatian citizens and the return of cultural property were beyond the jurisdiction of the Court and inadmissible. With respect to the submission of persons to trial, the Court found that it would consider this question when it examined Croatia's claims on the merits. With respect to the provision of information regarding the whereabouts of Croatians missing since 1991 and the return of cultural property, the Court indicated that the question whether remedies might appropriately be ordered was one which was dependent upon the findings that the Court might make of breaches of the Genocide Convention by Serbia, and that that question was not a question which could be the proper subject of a preliminary objection. The Court thus rejected the third preliminary objection of Serbia in its entirety.

Having rejected the preliminary objections or, in the case of one of them, ruled that it was not exclusively preliminary in character, the Court fixed 22 March 2010 as the time-limit for the filing of a Counter-Memorial by the Republic of Serbia. That pleading, containing counter-claims, was filed on 4 January 2010. By an Order of 4 February 2010, the Court directed the submission of a Reply by Croatia and a Rejoinder by Serbia. It fixed 20 December 2010 and 4 November 2011, respectively, as the time-limits for the filing of those written pleadings. The Reply and Rejoinder were filed within the time-limits thus fixed. By an Order of 23 January 2012, in order to ensure strict equality between the Parties, the Court decided to authorize the submission by Croatia of an additional written pleading relating to the counter-claims of Serbia. Croatia filed the additional pleading within the time-limit of 30 August 2012 as fixed by that Order.

95. *Aerial Incident of 10 August 1999 (Pakistan v. India)*

On 21 September 1999, the Islamic Republic of Pakistan filed an Application instituting proceedings against the Republic of India in respect of a dispute concerning the destruction, on 10 August 1999, of a Pakistani aircraft. By letter of 2 November 1999, the Agent of India notified the Court that his Government wished to submit preliminary objections to the jurisdiction of the Court, which were set out in an appended note. On 19 November 1999, the Court decided that the written pleadings would first address the question of the jurisdiction of the Court and fixed time-limits for the filing of the Memorial of Pakistan and the Counter-Memorial of India, which were duly filed within the time-limits so prescribed. Public hearings on the question of the jurisdiction of the Court were held from 3 to 6 April 2000.

In its Judgment of 21 June 2000, the Court noted that, to establish the jurisdiction of the Court, Pakistan had relied on Article 17 of the General Act for Pacific Settlement of International Disputes, signed at Geneva on 26 September 1928, on the declarations of acceptance of the compulsory jurisdiction of the Court made by the Parties and on Article 36, paragraph 1, of the Statute. It considered those bases of jurisdiction in turn.

The Court pointed out first that, on 21 May 1931, British India had acceded to the General Act of 1928. It observed that India and Pakistan had held lengthy discussions on the question whether the General Act had survived the dissolution of the League of Nations and whether, if so, the two States had become parties to that Act on their accession to independence. Referring to a communication addressed to the United Nations Secretary-General of 18 September 1974, in which the Indian Government indicated that, since India's accession to independence in 1947, they had "never regarded themselves as bound by the General Act of 1928 . . . whether by succession or otherwise", the Court concluded that India could not be regarded as party to the said Act on the date the Application had been filed by Pakistan and that the Convention did not constitute a basis of jurisdiction. The Court then considered the declaration of acceptance of the compulsory jurisdiction of the Court made by the two States. It noted that India's declaration contained a reservation under which "disputes with the government of any State which is or has been a member of the Commonwealth of Nations" was barred from its jurisdiction. The Court recalled that its jurisdiction only existed within the limits within which it had been accepted and that the right of States to attach reservations to their declarations was a recognized practice. Consequently Pakistan's arguments to the effect that India's reservation was "extra-statutory" or was obsolete could not be upheld. Pakistan being a member of the Commonwealth, the Court concluded that it did not have jurisdiction to deal with the Application on the basis of the declarations made by the two States.

Considering, thirdly, the final basis of jurisdiction relied on by Pakistan, namely Article 36, paragraph 1, of the Statute, according to which "the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations", the Court indicated that neither the United Nations Charter nor Article 1 of the Simla Accord of 2 July 1972 between the Parties conferred jurisdiction upon it to deal with the dispute between them.

Lastly, the Court explained that there was "a fundamental distinction between the acceptance by a State of the Court's jurisdiction and the compatibility of particular acts with international law" and that "the Court's lack of jurisdiction [did] not relieve States of their obligation to settle their disputes by peaceful means".

1.96. *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*

On 8 December 1999, the Republic of Nicaragua filed an Application instituting proceedings against the Republic of Honduras in respect of a dispute concerning the delimitation of the maritime zones appertaining to each of those States in the Caribbean Sea.

By an Order of 21 March 2000, the Court fixed 21 March 2001 and 21 March 2002, respectively, as the time-limits for the filing of a Memorial by Nicaragua and a Counter-Memorial by Honduras. Those pleadings were filed within the time-limits thus fixed.

By an Order of 13 June 2002, the Court authorized the submission of a Reply by Nicaragua and a Rejoinder by Honduras and fixed 13 January 2003 and 13 August 2003 as the respective time-limits for those pleadings. Those pleadings were filed within the time-limits thus prescribed.

Following public hearings in March 2007, the Court rendered its Judgment on 8 October 2007. In respect of sovereignty over the islands of Bobel Cay, Savanna

Cay, Port Royal Cay and South Cay, located in the area in dispute, the Court concluded that it had not been established that either Honduras or Nicaragua had title to those islands by virtue of *uti possidetis juris*. Having then sought to identify any post-colonial *effectivités*, the Court found that sovereignty over the islands belonged to Honduras, as it had shown that it had applied and enforced its criminal and civil law, had regulated immigration, fisheries activities and building activity and had exercised its authority in respect of public works there. As for the delimitation of the maritime areas between the two States, the Court found that no established boundary existed along the 15th parallel on the basis of either *uti possidetis juris* or a tacit agreement between the Parties. It thus proceeded to determine the delimitation itself. Since it was unable to apply the equidistance method, in view of the particular geographical circumstances, the Court drew a bisector (i.e., a line formed by bisecting the angle created by the linear approximations of the coastlines) with an azimuth of 70° 14′ 41.25″. It adjusted the course of the line to take account of the territorial seas accorded to the aforementioned islands and to resolve the issue of overlap between those territorial seas and that of the island of Edinburgh Cay (Nicaragua) by drawing a median line. Asked to identify the starting point of the maritime boundary between Nicaragua and Honduras, the Court, taking account of the continuing eastward accretion of Cape Gracias a Dios (a territorial projection and the point where the coastal fronts of the two States meet) as a result of alluvial deposits by the River Coco, decided to fix the point on the bisector at a distance of three nautical miles out to sea from the point which a mixed demarcation commission in 1962 had identified as the endpoint of the land boundary in the mouth of the River Coco. The Court further instructed the Parties to negotiate in good faith with a view to agreeing on the course of a line between the present endpoint of the land boundary and the starting-point of the maritime boundary thus determined. In respect of the endpoint of the maritime boundary, the Court stated that the line which it had drawn continued until it reached the area where the rights of certain third States might be affected.

187. *Arrest Warrant of 11 April 2000*
(Democratic Republic of the Congo v. Belgium)

On 17 October 2000, the Democratic Republic of the Congo (DRC) filed an Application instituting proceedings against Belgium concerning a dispute over an international arrest warrant issued on 11 April 2000 by a Belgian examining judge against the acting Congolese Minister for Foreign Affairs, Mr. Abdoulaye Yerodia Ndombasi, seeking his detention and subsequent extradition to Belgium for alleged crimes constituting "grave violations of international humanitarian law". The arrest warrant was transmitted to all States, including the DRC, which received it on 12 July 2000.

The DRC also filed a request for the indication of a provisional measure seeking "an order for the immediate discharge of the disputed arrest warrant". Belgium, for its part, called for that request to be rejected and for the case to be removed from the List. In its Order made on 8 December 2000, the Court, rejecting Belgium's request for the case to be removed from the List, stated that "the circumstances, as they [then] presented themselves to the Court, [were] not such as to require the exercise of its power, under Article 41 of the Statute, to indicate provisional measures".

The Memorial of the DRC was filed within the prescribed time-limits. For its part, Belgium filed, within the prescribed time-limits, a Counter-Memorial addressing both issues of jurisdiction and admissibility and the merits.

In its submissions presented at the public hearings, the DRC requested the Court to adjudge and declare that Belgium had violated the rule of customary international law concerning the inviolability and immunity from criminal process of incumbent foreign ministers and that it should be required to recall and cancel that arrest warrant and provide reparation for the moral injury to the DRC. Belgium raised objections relating to jurisdiction, mootness and admissibility.

In its Judgment of 14 February 2002, the Court rejected the objections raised by Belgium and declared that it had jurisdiction to entertain the application of the DRC. With respect to the merits, the Court observed that, in the case, it was only questions of immunity from criminal jurisdiction and the inviolability of an incumbent Minister for Foreign Affairs that it had to consider, on the basis, moreover, of customary international law.

The Court then observed that, in customary international law, the immunities accorded to Ministers for Foreign Affairs are not granted for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective States. The Court held that the functions exercised by a Minister for Foreign Affairs were such that, throughout the duration of his or her office, a Minister for Foreign Affairs when abroad enjoyed full immunity from criminal jurisdiction and inviolability. Inasmuch as the purpose of that immunity and inviolability was to prevent another State from hindering the Minister in the performance of his or her duties, no distinction could be drawn between acts performed by the latter in an "official" capacity and those claimed to have been performed in a "private capacity" or, for that matter, between acts performed before assuming office as Minister for Foreign Affairs and acts committed during the period of office. The Court then observed that, contrary to Belgium's arguments, it had been unable to deduce from its examination of State practice that there existed under customary international law any form of exception to the rule according immunity from criminal jurisdiction and inviolability to incumbent Ministers for Foreign Affairs when they were suspected of having committed war crimes or crimes against humanity.

The Court further observed that the rules governing the jurisdiction of national courts must be carefully distinguished from those governing jurisdictional immunities. The immunities under customary international law, including those of

Ministers for Foreign Affairs, remained opposable before the courts of a foreign State, even where those courts exercised an extended criminal jurisdiction on the basis of various international conventions on the prevention and punishment of certain serious crimes.

However, the Court emphasized that the immunity from jurisdiction enjoyed by incumbent Ministers for Foreign Affairs did not mean that they enjoyed impunity in respect of any crimes they might have committed, irrespective of their gravity. While jurisdictional immunity was procedural in nature, criminal responsibility was a question of substantive law. Jurisdictional immunity might well bar prosecution for a certain period or for certain offences; it could not exonerate the person to whom it applied from all criminal responsibility. The Court then spelled out the circumstances in which the immunities enjoyed under international law by an incumbent or former Minister for Foreign Affairs did not represent a bar to criminal prosecution.

After examining the terms of the arrest warrant of 11 April 2000, the Court noted that the issuance, as such, of the disputed arrest warrant represented an act by the Belgian judicial authorities intended to enable the arrest on Belgian territory of an incumbent Minister for Foreign Affairs, on charges of war crimes and crimes against humanity. It found that, given the nature and purpose of the warrant, its mere issuance constituted a violation of an obligation of Belgium towards the DRC, in that it had failed to respect the immunity which Mr. Yerodia enjoyed as incumbent Minister for Foreign Affairs. The Court also declared that the international circulation of the disputed arrest warrant from June 2000 by the Belgian authorities constituted a violation of an obligation of Belgium towards the DRC, in that it had failed to respect the immunity of the incumbent Minister for Foreign Affairs. Finally, the Court considered that its findings constituted a form of satisfaction which would make good the moral injury complained of by the DRC. However, the Court also held that, in order to re-establish "the situation which would, in all probability have existed if [the illegal act] had not been committed", Belgium must, by means of its own choosing, cancel the warrant in question and so inform the authorities to whom it had been circulated.

198. *Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections (Yugoslavia v. Bosnia and Herzegovina)*

On 24 April 2001, Yugoslavia[illegible] filed an Application for a revision of the Judgment delivered by the Court on 11 July 1996 on the preliminary objections raised in the case instituted against it by Bosnia and Herzegovina. By that Judgment of

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[illegible] In fact, the Federal Republic of Yugoslavia, which is referred to as "FRY" in the Judgment of 3 February 2003.

11 July 1996, the Court had declared that it had jurisdiction on the basis of Article IX of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and had dismissed the additional bases of jurisdiction relied on by Bosnia and Herzegovina, finding that the Application filed by the latter was admissible. Yugoslavia contended that a revision of the Judgment was necessary since it had now become clear that, before 1 November 2000 (the date on which it was admitted as a new Member of the United Nations), it did not continue the international legal and political personality of the Socialist Federal Republic of Yugoslavia, was not a Member of the United Nations, was not a State party to the Statute of the Court and was not a State party to the Genocide Convention. Yugoslavia therefore requested the Court to adjudge and declare that there was a new fact of such a character as to call for revision of the 1996 Judgment under Article 61 of the Statute.

After the filing, by Bosnia and Herzegovina, of its written observations on the admissibility of the Application, public hearings were held from 4 to 7 November 2002. In its Judgment on the admissibility of the Application, delivered on 3 February 2003, the Court noted in particular that, under Article 61 of the Statute, an application for revision of a judgment may be made only when it is "based upon the discovery" of a "new" fact which, "when the judgment was given", was unknown. Such a fact must have been in existence prior to the judgment and have been discovered subsequently. On the other hand, the Court continued, a fact which occurred several years after a judgment had been given was not a "new" fact within the meaning of Article 61, irrespective of the legal consequences that such a fact might have.

Hence, the Court considered that the admission of Yugoslavia to the United Nations on 1 November 2000, well after the 1996 Judgment, could not be regarded as a new fact capable of founding a request for revision of that Judgment.

In the final version of its argument, Yugoslavia claimed that its admission to the United Nations and a letter of 8 December 2000 from the Organization's Legal Counsel simply "revealed" two facts which had existed in 1996 but had been unknown at the time, namely, that it was not then a party to the Statute of the Court and that it was not bound by the Genocide Convention. On that point, the Court considered that, in so arguing, Yugoslavia was not relying on facts that existed in 1996 but "in reality, base[d] its Application for revision on the legal consequences which it [sought] to draw from facts subsequent to the Judgment which it [was] asking to have revised". Those consequences, even supposing them to be established, could not be regarded as facts within the meaning of Article 61 and the Court therefore rejected that argument of Yugoslavia.

The Court indicated that at the time when the Judgment of 1996 was given, the situation obtaining was that created by General Assembly resolution 47/1. That resolution, adopted on 22 September 1992, stated *inter alia*:

> "The General Assembly . . . considers that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations; and therefore decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly."

In its Judgment of 2003, the Court observed that

> "the difficulties which arose regarding the FRY's status between the adoption of that resolution and its admission to the United Nations on 1 November 2000 resulted from the fact that, although the FRY's claim to continue the international legal personality of the former Yugoslavia was not 'generally accepted' . . . , the precise consequences of this situation were determined on a case-by-case basis (for example, non-participation in the work of the General Assembly and ECOSOC and in the meetings of States parties to the International Covenant on Civil and Political Rights, etc.)"

The Court specified that resolution 47/1 did not affect Yugoslavia's right to appear before the Court or to be a party to a dispute before the Court under the conditions laid down by the Statute, nor did it affect the position of Yugoslavia in relation to the Genocide Convention. The Court further stated that resolution 55/12 of 1 November 2000 (by which the General Assembly decided to admit Yugoslavia to membership of the United Nations) could not have changed retroactively the *sui generis* position which that State found itself in vis-a-vis the United Nations over the period 1992 to 2000, or its position in relation to the Statute of the Court and the Genocide Convention. From the foregoing, the Court concluded that it had not been established that Yugoslavia's Application was based upon the discovery of "some fact" which was "when the judgment was given, unknown to the Court and also to the party claiming revision" and accordingly found that one of the conditions for the admissibility of an application for revision laid down by Article 61, paragraph 1, of the Statute had not been satisfied.

99. *Certain Property (Liechtenstein v. Germany)*

By an Application filed in the Registry on 1 June 2001, Liechtenstein instituted proceedings against Germany relating to a dispute concerning

> "decisions of Germany, in and after 1998, to treat certain property of Liechtenstein nationals as German assets having been 'seized for the purposes of reparation or restitution, or as a result of the state of war' — i.e., as a consequence of World War II —, without ensuring any compensation for the loss of that property to its owners, and to the detriment of Liechtenstein itself"

The historical context of the dispute was as follows. In 1945, Czechoslovakia confiscated certain property belonging to Liechtenstein nationals, including

Prince Franz Josef II of Liechtenstein, pursuant to the "Beneš Decrees", which authorized the confiscation of "agricultural property" (including buildings, installations and movable property) of "all persons belonging to the German and Hungarian people, regardless of their nationality". A special regime with regard to German external assets and other property seized in connection with the Second World War was created under the Convention on the Settlement of Matters Arising out of the War and the Occupation (Chapter Six), signed in 1952 at Bonn. In 1991, a painting by the Dutch master Pieter van Laer was lent by a museum in Brno (Czechoslovakia) to a museum in Cologne (Germany) for inclusion in an exhibition. This painting had been the property of the family of the Reigning Prince of Liechtenstein since the eighteenth century; it was confiscated in 1945 by Czechoslovakia under the Beneš Decrees. Prince Hans-Adam II of Liechtenstein, acting in his personal capacity, then filed a lawsuit in the German courts to have the painting returned to him as his property, but that action was dismissed on the ground that, under Article 3, Chapter Six, of the Settlement Convention (paragraphs 1 and 3 of which are still in force), no claim or action in connection with measures taken against German external assets in the aftermath of the Second World War was admissible in German courts. A claim brought by Prince Hans-Adam II before the European Court of Human Rights regarding the decisions of the German courts was also dismissed.

In its Application, Liechtenstein requested the Court "to adjudge and declare that Germany has incurred international legal responsibility and is bound to make appropriate reparation to Liechtenstein for the damage and prejudice suffered". It further requested "that the nature and amount of such reparation should, in the absence of agreement between the parties, be assessed and determined by the Court, if necessary in a separate phase of the proceedings". As a basis for the Court's jurisdiction, Liechtenstein invoked Article 1 of the European Convention for the Peaceful Settlement of Disputes, signed at Strasbourg on 29 April 1957.

Liechtenstein filed its Memorial on 28 March 2002, within the time-limit fixed by the Court. On 27 June 2002, Germany filed preliminary objections to jurisdiction and admissibility and the proceedings on the merits were accordingly suspended. On 15 November 2002, Liechtenstein filed its written observations on the preliminary objections of Germany within the time-limit prescribed by the President of the Court.

Following public hearings on the preliminary objections of Germany in June 2004, the Court delivered its Judgment on 10 February 2005. The Court began by examining Germany's first preliminary objection, which argued that the Court lacked jurisdiction because there was no dispute between the Parties. The Court rejected this objection, finding that there existed a legal dispute between the Parties, namely a dispute as to whether, by applying Article 3, Chapter Six, of the Settlement Convention to Liechtenstein property that had been confiscated by Czechoslovakia in 1945, Germany was in breach of the international obligations it owed to Liechtenstein and, if so, what was the extent of its international responsibility.

The Court then considered Germany's second objection, which required it to decide, in the light of the provisions of Article 27 *(a)* of the European Convention for the Peaceful Settlement of Disputes, whether the dispute related to facts or situations that arose before or after 18 February 1980, the date on which that Convention entered into force between Germany and Liechtenstein. The Court noted in this respect that it was not contested that the dispute had been triggered by the decisions of the German courts in the aforementioned case. The critical issue, however, was not the date on which the dispute arose, but the date of the facts or situations in relation to which the dispute arose. In the Court's view, the dispute brought before it could only relate to the events that transpired in the 1990s if, as argued by Liechtenstein, in that period, Germany had either departed from a previous common position that the Settlement Convention did not apply to Liechtenstein property, or if German courts, by applying their earlier case law under the Settlement Convention for the first time to Liechtenstein property, had applied that Convention "to a new situation" after the critical date. Having found that neither was the case, the Court concluded that, although these proceedings had been instituted by Liechtenstein as a result of decisions by German courts concerning a painting by Pieter van Laer, the events in question had their source in specific measures taken by Czechoslovakia in 1945, which had led to the confiscation of property owned by some Liechtenstein nationals, including Prince Franz Jozef II of Liechtenstein, as well as in the special régime created by the Settlement Convention, and that the source or real cause of the dispute was accordingly to be found in the Settlement Convention and the Beneš Decrees. The Court therefore upheld Germany's second preliminary objection, finding that it could not rule on Liechtenstein's claims on the merits.

100. *Territorial and Maritime Dispute (Nicaragua v. Colombia)*

On 6 December 2001, the Republic of Nicaragua filed an Application instituting proceedings against the Republic of Colombia in respect of a dispute concerning "a group of related legal issues subsisting" between the two States "concerning title to territory and maritime delimitation". On 28 April 2003, Nicaragua filed its Memorial within the time-limit laid down by the Court. On 21 July 2003, Colombia filed preliminary objections to jurisdiction, leading to the suspension of the proceedings on the merits.

In its Judgment on the preliminary objections, rendered on 13 December 2007, the Court found that it had jurisdiction to entertain the dispute concerning sovereignty over the maritime features claimed by the Parties, other than the islands of San Andrés, Providencia and Santa Catalina. The Court held that the treaty signed in 1928 between Colombia and Nicaragua (in which Colombia recognized Nicaragua's sovereignty over the Mosquito Coast and the Corn Islands, while

Nicaragua recognized Colombia's sovereignty over the islands of San Andrés, Providencia and Santa Catalina, and the maritime features forming part of the San Andres Archipelago) had settled the issue of sovereignty over the islands of San Andres, Providencia and Santa Catalina, that there was no extant legal dispute between the Parties on that question and that, therefore, the Court could not have jurisdiction over it under the American Treaty on Pacific Settlement (also known as the Pact of Bogotá and invoked by Nicaragua as basis for the Court's jurisdiction in the case). On the other hand, as regards the question of the scope and composition of the rest of the San Andrés Archipelago, the Court considered that the 1928 Treaty failed to provide answers as to which other maritime features formed part of the Archipelago and thus that it had jurisdiction to adjudicate on the dispute regarding sovereignty over those other maritime features. As for its jurisdiction with respect to the maritime delimitation issue, the Court concluded that the 1928 Treaty had not effected a general delimitation of the maritime areas between Colombia and Nicaragua and that, as the dispute had not been settled within the meaning of the Pact of Bogotá, the Court had jurisdiction to adjudicate upon it.

On 25 February 2010, Costa Rica filed an Application for permission to intervene in the case. In its Application it contended, among other things, that "[b]oth Nicaragua and Colombia, in their boundary claims against each other, claim maritime area to which Costa Rica is entitled" and indicated that it wished to intervene in the proceedings as a non-party State. On 10 June 2010, the Republic of Honduras also filed an Application for permission to intervene in the case, asserting that Nicaragua, in its dispute with Colombia, had put forward maritime claims that lay in an area of the Caribbean Sea in which Honduras had rights and interests. Honduras stated in its Application that it was seeking primarily to intervene in the proceedings as a party. The Court rendered two Judgments on 4 May 2011, in which it ruled that the Applications for permission to intervene filed by Costa Rica and Honduras could not be granted. The Court noted that the interest of a legal nature invoked by Costa Rica could only be affected if the maritime boundary that the Court had been asked to draw between Nicaragua and Colombia were to be extended beyond a certain latitude southwards. However, following its jurisprudence, the Court, when drawing a line delimiting the maritime areas between the two Parties to the main proceedings, would, if necessary, end that line before it reached an area in which the interests of a legal nature of third States might be involved. The Court concluded that Costa Rica's interest of a legal nature could not be affected by the decision in the proceedings between Nicaragua and Colombia. With respect to Honduras's Application for permission to intervene, the Court found that Honduras had failed to satisfy the Court that it had an interest of a legal nature that might be affected by the decision of the Court in the main proceedings. It ruled on the one hand that, since the entire maritime boundary between Honduras and Nicaragua in the Caribbean Sea had been settled by the Judgment of the Court rendered between those two States in

2007, there were no extant rights or legal interests that Honduras might seek to protect in the settlement of the dispute between Nicaragua and Colombia. On the other hand, the Court held that Honduras could invoke an interest of a legal nature, in the main proceedings, on the basis of the 1986 bilateral treaty concluded between Honduras and Colombia, but clarified that it would not be relying on that treaty to determine the maritime boundary between Colombia and Nicaragua.

In its Judgment rendered on the merits of the case on 19 November 2012, the Court found that the territorial dispute between the Parties concerned sovereignty over the features situated in the Caribbean Sea — the Alburquerque Cays, the East-Southeast Cays, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo — which were all above water at high tide and which were therefore islands capable of appropriation. The Court noted, however, that Quitasueño comprised only a single, tiny island, known as QS 32, and a number of low-tide elevations (features above water at low tide but submerged at high tide). The Court then observed that, under the terms of the 1928 Treaty concerning Territorial Questions at Issue between Colombia and Nicaragua, Colombia not only had sovereignty over the islands of San Andrés, Providencia and Santa Catalina, but also over other islands, islets and reefs "forming part" of the San Andrés Archipelago. Thus, in order to address the question of sovereignty, the Court first needed to ascertain what constituted the San Andrés Archipelago. It concluded, however, that neither the 1928 Treaty nor the historical documents conclusively established the composition of that Archipelago. The Court therefore examined the arguments and evidence not based on the composition of the Archipelago under the 1928 Treaty. It found that neither Nicaragua nor Colombia had established that it had title to the disputed maritime features by virtue of *uti possidetis juris* (the principle that, upon independence, new States inherit the territories and boundaries of the former colonial provinces), because nothing clearly indicated whether these features were attributed to the colonial provinces of Nicaragua or of Colombia. The Court then considered whether sovereignty could be established on the basis of State acts manifesting a display of authority on a given territory *(effectivités)*. It regarded it as having been established that for many decades Colombia had continuously and consistently acted *à titre de souverain* in respect of the maritime features in dispute. This exercise of sovereign authority had been public and there was no evidence that it had met with any protest from Nicaragua prior to 1969, when the dispute had crystallized. Moreover, the evidence of Colombia's acts of administration with respect to the islands was in contrast to the absence of any evidence of acts *à titre de souverain* on the part of Nicaragua. The Court also noted that, while not being evidence of sovereignty, Nicaragua's conduct with regard to the maritime features in dispute, the practice of third States and maps afforded some support to Colombia's claim. The Court concluded that Colombia, and not Nicaragua, had sovereignty over the islands at Alburquerque, Bajo Nuevo, East-Southeast Cays, Quitasueño, Roncador, Serrana and Serranilla.

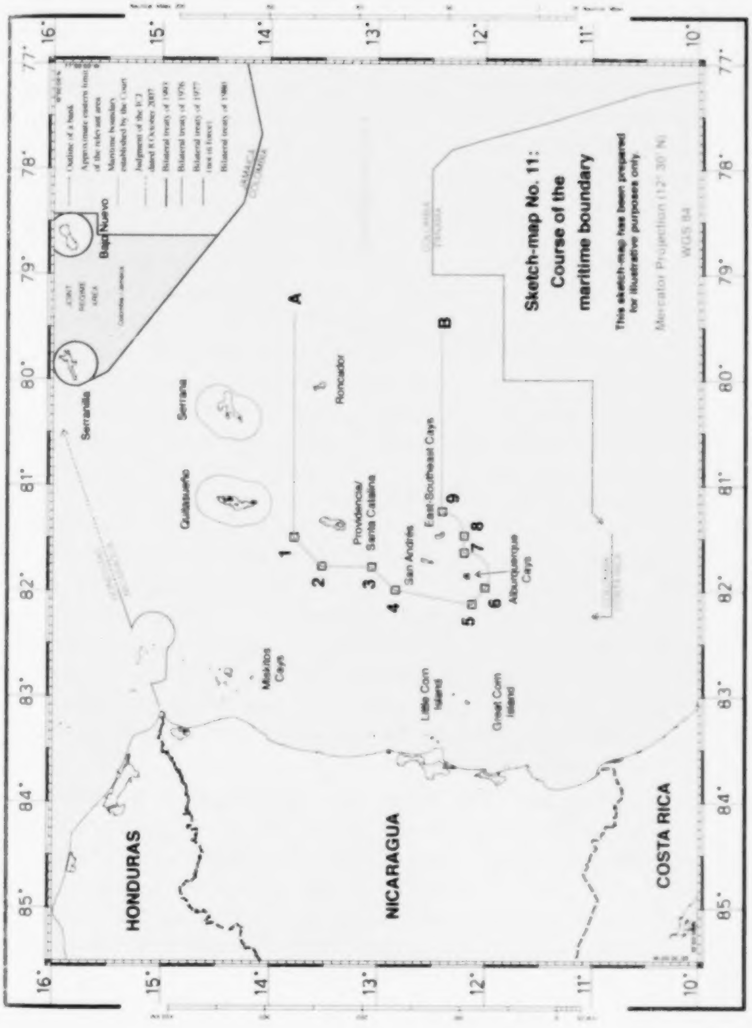
With respect to Nicaragua's claim for delimitation of a continental shelf extending beyond 200 nautical miles, the Court observed that "any claim of continental shelf rights beyond 200 miles [by a State party to the 1982 United Nations Convention on the Law of the Sea (UNCLOS)] must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf". Given the object and purpose of UNCLOS, as stipulated in its Preamble, the fact that Colombia was not a party thereto did not relieve Nicaragua of its obligations under Article 76 of that Convention. The Court observed that Nicaragua had submitted to the Commission only "Preliminary Information" which, by its own admission, fell short of meeting the requirements for the Commission to be able to make its recommendations. As the Court was not presented with any further information, it found that, in this case, Nicaragua had not established that it had a continental margin that extended far enough to overlap with Colombia's 200-nautical-mile entitlement to the continental shelf, measured from Colombia's mainland coast. The Court was therefore not in a position to delimit the maritime boundary between the extended continental shelf as claimed by Nicaragua and the continental shelf of Colombia. Notwithstanding this conclusion, the Court noted that it was still called upon to effect the delimitation of the zone situated within 200 nautical miles of the Nicaraguan coast, where the entitlements of Colombia and Nicaragua overlapped.

In order to effect the delimitation of the maritime boundary, the Court first determined what the relevant coasts of the Parties were, namely those coasts the projections of which overlapped. It found that Nicaragua's relevant coast was its whole coast, with the exception of the short stretch of coast near Punta de Perlas, and that Colombia's relevant coast was the entire coastline of the islands under Colombian sovereignty, except for Quitasueño, Serranilla and Bajo Nuevo. The Court next noted that the relevant maritime area, i.e., the area in which the potential entitlements of the Parties overlapped, extended 200 nautical miles east of the Nicaraguan coast. The boundaries to the north and to the south were determined by the Court in such a way as not to overlap with any existing boundaries or to extend into areas where the rights of third States might be affected.

To effect the delimitation, the Court followed the three-stage procedure previously laid down by and employed in its jurisprudence.

First, it selected the base points and constructed a provisional median line between the Nicaraguan coast and the western coasts of the relevant Colombian islands opposite the Nicaraguan coast.

Second, the Court considered any relevant circumstances which might have called for an adjustment or shifting of the provisional median line so as to achieve an equitable result. It observed that the substantial disparity between the relevant Colombian coast and that of Nicaragua (approximately 1:8.2), and the need to avoid a situation whereby the line of delimitation cut off one or other of the Par


Sketch-map No. 11:
Course of the
maritime boundary
This sketch-map has been prepared for illustrative purposes only.
Mercator Projection (12° 30' N)
WGS 84
Outline of a bank
Approximate eastern limit of the relevant area
Maritime boundary established by the Court
Judgment of the ICJ dated 8 October 2007
Bilateral treaty of 1993
Bilateral treaty of 1976
Bilateral treaty of 1977 (not in force)
Bilateral treaty of 1980
JOINT REGIME AREA
Colombia / Jamaica
Jamaica
Colombia
Colombia
Panama
Colombia
Costa Rica
HONDURAS
NICARAGUA
COSTA RICA
Serranilla
Bajo Nuevo
Serrana
Quitasueño
Roncador
Providencia/
Santa Catalina
San Andrés
East-Southeast Cays
Alburquerque Cays
Miskitos Cays
Little Corn Island
Great Corn Island
A
B
1
2
3
4
5
6
7
8
9
16°
15°
14°
13°
12°
11°
10°
85°
84°
83°
82°
81°
80°
79°
78°
77°

ties from maritime areas into which its coasts projected, constituted relevant circumstances. The Court noted that, while legitimate security concerns had to be borne in mind in determining what adjustment should be made to the provisional median line or in what way that line should be shifted, the conduct of the Parties, issues of access to natural resources and delimitations already effected in the area were not relevant circumstances in this case. In the relevant area between the Nicaraguan mainland and the western coasts of the Alburquerque Cays, San Andres, Providencia and Santa Catalina, where the relationship was one of opposite coasts, the relevant circumstances called for the provisional median line to be shifted eastwards. To that end, the Court determined that different weightings should be given to the base points situated on Nicaraguan and Colombian islands, namely a weighting of one to each of the Colombian base points and a weighting of three to each of the Nicaraguan base points. The Court considered, however, that extending the line thus constructed to the north or the south would not lead to an equitable result, since it would leave Colombia with a significantly larger share of the relevant area than that accorded to Nicaragua, notwithstanding the fact that Nicaragua's relevant coast was more than eight times the length of Colombia's relevant coast. Moreover, it would cut off Nicaragua from the areas to the east of the principal Colombian islands into which the Nicaraguan coast projected. In the view of the Court, an equitable result was to be achieved by continuing the boundary line out to the line 200 nautical miles from the Nicaraguan coast. To the north, that line would follow the parallel passing through the most northern point of the outer limit of the 12-nautical-mile territorial sea of Roncador. To the south, the maritime boundary would first follow the outer limit of the 12-nautical-mile territorial sea of the Alburquerque and East-Southeast Cays, then the parallel from the most eastern point of the territorial sea of the East-Southeast Cays. In order to prevent Quitasueno and Serrana from falling, under those circumstances, on the Nicaraguan side of the boundary line, the maritime boundary around each of those features would follow the outer limit of their 12-nautical-mile territorial sea.

Third, and finally, the Court checked that, taking account of all the circumstances of the case, the delimitation thus obtained did not create a disproportionality that would render the result inequitable. The Court observed that the boundary line had the effect of dividing the relevant area between the Parties in a ratio of approximately 1:3.44 in Nicaragua's favour, while the ratio of relevant coasts was approximately 1:8.2. It concluded that that line did not entail such disproportionality as to create an inequitable result.

1.101. *Frontier Dispute (Benin/Niger)*

On 3 May 2002, Benin and Niger, by joint notification of a Special Agreement signed on 15 June 2001 at Cotonou and which entered into force on 11 April 2002, seised the Court of a dispute concerning "the definitive delimitation of the whole boundary between them". Under the terms of Article 1 of that Special Agreement, the Parties agreed to submit their frontier dispute to a Chamber of the Court, formed pursuant to Article 26, paragraph 2, of the Statute, and each to choose a judge *ad hoc*. By an Order of 27 November 2002, the Court unanimously decided to accede to the request of the two Parties for a special Chamber of five judges to be formed to deal with the case. It formed a Chamber composed as follows: President Guillaume; Judges Ranjeva, Kooijmans; Judges *ad hoc* Bedjaoui (chosen by Niger) and Bennouna (chosen by Benin). In the same Order, the Court also fixed 27 August 2003 as the time-limit for the filing of a Memorial by each Party. Those pleadings were filed within the time-limit thus prescribed. The Parties filed their Counter-Memorials within the time-limit fixed by the Order of the President of the Chamber of 11 September 2003. By an Order of 9 July 2004, the President of the Chamber authorized the filing of a Reply by each of the Parties and fixed 17 December 2004 as the time-limit for those filings. The Replies were filed within the time-limit thus prescribed.

By an Order of 16 February 2005, the Court declared that, on 16 February 2005, Judge Ronny Abraham had been elected a member of the Chamber to fill the vacancy which had arisen following the resignation from the Court of Judge Guillaume, the former President of that Chamber. The Court also declared that, as a result of Judge Guillaume's resignation, the Vice-President of the Court, Judge Raymond Ranjeva, had become the new President of the Chamber, which was consequently composed as follows: President Ranjeva; Judges Kooijmans, Abraham; Judges *ad hoc* Bedjaoui and Bennouna.

Following public hearings held in March 2005, the Chamber delivered its Judgment on 12 July 2005. After briefly recalling the geographical and historical context of the dispute between these two former colonies, which had been part of French West Africa (FWA) until their accession to independence in August 1960, the Chamber considered the question of the law applicable to the dispute. It stated that this included the principle of the intangibility of the boundaries inherited from colonization, or the principle of *uti possidetis juris*, whose "primary aim is securing respect for the territorial boundaries at the moment when independence is achieved". The Chamber found that, on the basis of this principle, it had to determine in the case the boundary that had been inherited from the French administration. It noted that "the Parties agreed that the dates to be taken into account for this purpose were those of their respective independence, namely 1 and 3 August 1960".

The Chamber then considered the course of the boundary in the River Niger sector. It first examined the various regulative or administrative acts invoked by the Parties in support of their respective claims and concluded that "neither of the Parties has succeeded in providing evidence of title on the basis of [those] acts during the colonial period". In accordance with the principle that, where no legal title exists, the *effectivités* "must invariably be taken into consideration", the

Chamber then proceeded to examine the evidence presented by the Parties regarding the effective exercise of authority on the ground during the colonial period, in order to determine the course of the boundary in the River Niger sector and to indicate to which of the two States each of the islands in the river belonged, in particular the island of Lété.

On the basis of this evidence in respect of the period 1914-1954, the Chamber concluded that there was a *modus vivendi* between the local authorities of Dahomey and Niger in the region concerned, whereby both Parties regarded the main navigable channel of the river as constituting the intercolonial boundary. The Chamber observed that, pursuant to this *modus vivendi*, Niger exercised its administrative authority over the islands located to the left of the main navigable channel (including the island of Lété) and Dahomey over those located to the right of that channel. The Chamber noted that "the entitlement of Niger to administer the island of Lété was sporadically called into question for practical reasons but was neither legally nor factually contested". With respect to the islands located opposite the town of Gaya (Niger), the Chamber noted that, on the basis of the *modus vivendi*, these islands were considered to fall under the jurisdiction of Dahomey. According to the Chamber, it therefore followed that, in that sector of the river, the boundary was regarded as passing to the left of these three islands.

The Chamber found that "[t]he situation is less clear in the period between 1954 and 1960". However, on the basis of the evidence submitted by the Parties, it "cannot conclude that the administration of the island of Lété, which before 1954 was undoubtedly carried out by Niger, was effectively transferred to or taken over by Dahomey".

The Chamber concluded from the foregoing that the boundary between Benin and Niger in that sector follows the main navigable channel of the River Niger as it existed at the dates of independence, it being understood that, in the vicinity of the three islands opposite Gaya, the boundary passes to the left of those islands. Consequently, Benin has title to the islands situated between the boundary thus defined and the right bank of the river and Niger had title to the islands between that boundary and the left bank of the river.

In order to determine the precise location of the boundary line in the main navigable channel, namely the line of deepest soundings, as it existed at the dates of independence, the Chamber relied on a report prepared in 1970, at the request of the Governments of Dahomey, Mali, Niger and Nigeria, by the firm Netherlands Engineering Consultants (NEDECO). In its Judgment, the Chamber specified the co-ordinates of 154 points through which the boundary between Benin and Niger passes in that sector. It stated *inter alia* that Lété Goungou belongs to Niger. Finally, the Chamber concluded that the Special Agreement also conferred jurisdiction upon it to determine the boundary line on the bridges between Gaya and

Malanville. It found that the boundary on those structures follows the course of the boundary in the River Niger.

In the second part of its Judgment, dealing with the western section of the boundary between Benin and Niger, in the sector of the River Mekrou, the Chamber proceeded to examine the various documents invoked by the Parties in support of their respective arguments. It concluded that, notwithstanding the existence of a legal title of 1907 relied on by Niger in support of its claimed boundary, it was clear that,

> "at least from 1927 onwards, the competent administrative authorities regarded the course of the Mekrou as the intercolonial boundary separating Dahomey from Niger, that those authorities reflected that boundary in the successive instruments promulgated by them after 1927, some of which expressly indicated that boundary, whilst others necessarily implied it, and that this was the state of the law at the dates of independence in August 1960".

The Chamber concluded that, in the River Mekron sector, the boundary between Benin and Niger was constituted by the median line of that river.

[illegible] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*

On 28 May 2002, the Democratic Republic of the Congo (DRC) filed in the Registry of the Court an Application instituting proceedings against Rwanda for "massive, serious and flagrant violations of human rights and international humanitarian law" resulting

> "from acts of armed aggression perpetrated by Rwanda on the territory of the Democratic Republic of the Congo in flagrant breach of the sovereignty and territorial integrity [of the DRC], as guaranteed by the United Nations Charter and the Charter of the Organization of African Unity".

The DRC stated in its Application that the Court's jurisdiction to deal with the dispute between it and Rwanda "derive[d] from compromissory clauses" in many international legal instruments, such as the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the Constitution of the World Health Organization (WHO), the Constitution of UNESCO, the 1984 New York Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. The DRC added that the jurisdiction of the Court also derived from the supremacy of peremptory norms (*jus cogens*), as reflected in certain international treaties and conventions, in the area of human rights.

On 28 May 2002, the date of the filing of the Application, the DRC also submitted a request for the indication of provisional measures. Public hearings were held on 13 and 14 June 2002 on that request. By an Order of 10 July 2002, the Court rejected that request, holding that it did not, in this case, have the prima facie jurisdiction necessary to indicate the provisional measures requested by the DRC. Further, "in the absence of a manifest lack of jurisdiction", it also rejected Rwanda's request for the case to be removed from the List. The Court also found that its findings in no way prejudged the question of its jurisdiction to deal with the merits of the case or any questions relating to the admissibility of the Application or relating to the merits themselves.

On 18 September 2002, the Court delivered an Order directing that the written pleadings should first be addressed to the questions of the jurisdiction of the Court and the admissibility of the Application, and fixed 20 January 2003 and 20 May 2003, respectively, as the time-limits for the filing of the Memorial of Rwanda and Counter-Memorial of the DRC. Those pleadings were filed within the time-limits thus prescribed.

In its Judgment of 3 February 2006, the Court ruled that it did not have jurisdiction to entertain the Application filed by the DRC. It found that the international instruments invoked by the DRC could not be relied on, either because Rwanda (1) was not a party to them (as in the case of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) or (2) had made reservations to them (as in the case of the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Elimination of All Forms of Racial Discrimination), or because (3) other preconditions for the seisin of the Court had not been satisfied (as in the case of the Convention on the Elimination of All Forms of Discrimination against Women, the Constitution of the WHO, the Constitution of UNESCO and the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation).

Since the Court had no jurisdiction to entertain the Application, it was not required to rule on its admissibility. Mindful that the subject-matter of the dispute was very similar in nature to that in the case between the Congo and Uganda (see No. 1.92 above), and that the reasons as to why the Court would not proceed to an examination of the merits in the case between Congo and Rwanda needed to be carefully explained, the Court stated that it was precluded by a number of provisions in its Statute from taking any position on the merits of the claims made by the DRC. It recalled, however, "that there is a fundamental distinction between the acceptance by States of the Court's jurisdiction and the conformity of their acts with international law". Thus, "[w]hether or not States have accepted the jurisdiction of the Court, they are required to fulfil their obligations under the United Nations Charter and the other rules of international law, including international humanitarian and human rights law, and they remain responsible for acts attributable to them which are contrary to international law".

103. *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras)*

On 10 September 2002, El Salvador filed a request for revision of the Judgment delivered on 11 September 1992 by a Chamber of the Court in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*. El Salvador indicated that "the sole purpose of the Application [was] to seek revision of the course of the boundary decided by the Court for the sixth disputed sector of the land boundary between El Salvador and Honduras". It was the first time that an Application had been made seeking a revision of a judgment rendered by one of the Court's Chambers.

By an Order of 27 November 2002, the Court unanimously decided to accede to the request of the two Parties for it to form a special Chamber of five judges to deal with the case. It formed a Chamber composed as follows: President Guillaume; Judges Rezek and Buergenthal; Judges *ad hoc* Torres Bernárdez (chosen by Honduras) and Paolillo (chosen by El Salvador). In its Order, the Court also fixed 1 April 2003 as the time-limit for the filing of written observations by Honduras on the admissibility of the request for revision. That pleading having been filed within the time-limit so prescribed, the Chamber held public hearings on the admissibility of the Application from 8 to 12 September 2003.

The Chamber rendered its Judgment on 18 December 2003. In the earlier proceedings which had resulted in the 1992 Judgment, Honduras had contended that in the sixth sector the boundary followed the present course of the River Goascoran. El Salvador, however, had claimed that the boundary was defined by a previous course of the river, which it had abandoned as a result of an "avulsion" — an abrupt change in the riverbed. The Chamber began by recalling that at this stage of the proceedings it must determine whether the Application for revision was admissible in that it satisfied the requirements laid down by Article 61 of the Court's Statute; that is to say, the application must, *inter alia*, be based on the "discovery" of a fact "of such a nature as to be a decisive factor" which, "when the judgment was given", was "unknown to the Court and also to the party claiming revision".

In support of its Application, El Salvador claimed, *inter alia*, to possess scientific, technical and historical evidence showing the existence of a previous bed of the Goascoran and of its avulsion in the mid-eighteenth century. El Salvador contended that this evidence constituted "new facts" within the meaning of Article 61, and that these were "decisive", since in the 1992 Judgment, in the absence of proof of any avulsion, the boundary had been declared to follow the course of the Goascoran as it was in 1821 and not the course prior to avulsion. After examining the reasoning followed by the Chamber in 1992, the present Chamber found that the boundary had been determined by application of the principle of *uti* *possidetis juris,* whereby the boundaries of States resulting from decolonization in Spanish America are to follow the colonial administrative boundaries. However, the 1992 Judgment had indicated that the situation resulting from *uti possidetis* was susceptible of modification as a result of the conduct of the Parties after independence in 1821. The Chamber found that the 1992 Chamber had rejected El Salvador's claims precisely because of that State's conduct subsequent to 1821. The Chamber accordingly held that it did not matter whether or not there had been an avulsion of the Goascoran, since, even if avulsion were now proved, findings to that effect would provide no basis for calling into question the decision taken by the Chamber in 1992 on different grounds. The facts asserted by El Salvador were accordingly not "decisive factors" in respect of the Judgment which it sought to have revised.

In regard to the second new fact relied on by El Salvador, namely the discovery of further copies of the "Carta Esferica" (a maritime chart of the Gulf of Fonseca prepared in or about 1796 by officers of the brigantine *El Activo*) and of the report of that vessel's expedition, which differed from those produced by Honduras in the original proceedings, El Salvador contended that the fact that these documents existed in a number of versions and contained discrepancies and anachronisms compromised the evidentiary value that the Chamber had attached to them in 1992. The Chamber accordingly considered whether the 1992 Chamber might have reached different conclusions if it had had before it the new versions of these documents produced by El Salvador. It concluded that this was not the case. The new versions in fact confirmed the conclusions reached by the Chamber in 1992 and were thus not "decisive factors".

Having found that none of the new facts alleged by El Salvador were "decisive factors" in relation to the Judgment of 11 September 1992, the Chamber held that it was unnecessary for it to ascertain whether the other conditions laid down by Article 61 of the Statute were satisfied.

5.104 *Avena and Other Mexican Nationals (Mexico v. United States of America)*

On 9 January 2003, Mexico brought a case against the United States of America in a dispute concerning alleged violations of Articles 5 and 36 of the Vienna Convention on Consular Relations of 24 April 1963 with respect to 54 Mexican nationals who had been sentenced to death in certain states of the United States. At the same time as its Application, Mexico also submitted a request for the indication of provisional measures, among other things so that the United States would take all measures necessary to ensure that no Mexican national was executed and no action was taken that might prejudice the rights of Mexico or its nationals with regard to any decision the Court might render on the merits of the case. After hearing the Parties at public hearings on the provisional measures held on 21 January 2003, the Court, on 5 February 2003, made an Order, by which it decided that the

> "United States of America sh[ould] take all measures necessary to ensure that Mr. Cesar Roberto Fierro Reyna, Mr. Roberto Moreno Ramos and Mr. Osvaldo Torres Aguilera [three Mexican nationals] [we]re not executed pending final judgment in these proceedings",

that the "United States of America sh[ould] inform the Court of all measures taken in implementation of [that] Order", and that the Court would remain seised of the matters which formed the subject of that Order until the Court had rendered its final judgment. The same day, it issued another Order fixing 6 June 2003 as the time-limit for the filing of the Memorial by Mexico and 6 October 2003 as the time-limit for the filing of the Counter-Memorial by the United States of America. The President of the Court subsequently extended those dates respectively to 20 June 2003 and 3 November 2003. Those pleadings were filed within the time-limits thus extended.

After holding public hearings in December 2004, the Court rendered its Judgment on 31 March 2004. Mexico had amended its claims during the written phase of the proceedings and again at the oral proceedings, so that the Court ultimately ruled on the cases of 52 (rather than 54) Mexican nationals.

The Court first considered four objections by the United States to its jurisdiction and five objections to admissibility. Mexico had argued that all of these objections were inadmissible because they had been submitted outside the time-limit prescribed by the Rules of Court, but the Court did not accept this. The Court then dismissed the United States objections, whilst reserving certain of them for consideration at the merits stage.

Ruling on the merits of the case, the Court began by considering whether the 52 individuals concerned were solely of Mexican nationality. Finding that the United States had failed to show that certain of them were also United States nationals, the Court held that the United States was under an obligation to provide consular information pursuant to Article 36, paragraph 1 *(b)*, of the Vienna Convention in respect of all 52 Mexican nationals. Regarding the meaning to be given to the phrase "without delay" in Article 36 (1) *(b)*, the Court further held that there is an obligation to provide consular information as soon as it is realized that the arrested person is a foreign national, or that there are grounds for thinking that he is probably a foreign national. The Court found that, in all of the cases except one, the United States had violated its obligation to provide the required consular information. Taking note of the interrelated nature of the three subparagraphs *(a)*, *(b)* and *(c)* of paragraph 1 of Article 36 of the Vienna Convention, the Court then went on to find that the United States had, in 49 cases, also violated the obligation to enable Mexican consular officers to communicate with, have access to and visit their nationals and, in 34 cases, to arrange for their legal representation.

In relation to Mexico's arguments concerning paragraph 2 of Article 36 and the right of its nationals to effective review and reconsideration of convictions and sentences impaired by a violation of Article 36 (1), the Court found that, in view of its failure to revise the procedural default rule since the Court's decision in the *LaGrand* case (see No. 1.80 above), the United States had in three cases violated paragraph 2 of Article 36, although the possibility of judicial re-examination was still open in the 49 other cases.

In regard to the legal consequences of the proven violations of Article 36 and to Mexico's requests for *restitutio in integrum*, through the partial or total annulment of convictions and sentences, the Court pointed out that what international law required was reparation in an adequate form, which in this case meant review and reconsideration by United States courts of the Mexican nationals' convictions and sentences. The Court considered that the choice of means for review and reconsideration should be left to the United States, but that it was to be carried out by taking account of the violation of rights under the Vienna Convention. After recalling that the process of review and reconsideration should occur in the context of judicial proceedings, the Court stated that the executive clemency process was not sufficient in itself to serve that purpose, although appropriate clemency procedures could supplement judicial review and reconsideration. Contrary to Mexico's claims, the Court found no evidence of a regular and continuing pattern of breaches of Article 36 by the United States. The Court moreover recognized the efforts of the United States to encourage compliance with the Vienna Convention, and took the view that that commitment provided a sufficient guarantee and assurance of non-repetition as requested by Mexico.

The Court further observed that, while the present case concerned only Mexican nationals, that should not be taken to imply that its conclusions did not apply to other foreign nationals finding themselves in similar situations in the United States. Finally, the Court recalled that the United States had violated paragraphs 1 and 2 of Article 36 in the case of the three Mexican nationals concerned by the Order of 5 February 2003 indicating provisional measures, and that no review and reconsideration of conviction and sentence had been carried out in those cases. The Court considered that it was therefore for the United States to find an appropriate remedy having the nature of review and reconsideration according to the criteria indicated in the Judgment.

1.108 *Certain Criminal Proceedings in France (Republic of the Congo v. France)*

On 9 December 2002, the Republic of the Congo filed an Application instituting proceedings against France seeking the annulment of the investigation and prosecution measures taken by the French judicial authorities further to a complaint concerning crimes against humanity and torture allegedly committed in the Congo against individuals of Congolese nationality filed by various human rights associations against the President of the Republic of the Congo, Mr. Denis Sassou Nguesso, the Congolese Minister of the Interior, General Pierre Oba, and other individuals including General Norbert Dabira, Inspector-General of the Congolese Armed Forces, and General Blaise Adoua, Commander of the Presidential Guard. The Congo contended that, by

> "attributing to itself universal jurisdiction in criminal matters and by arrogating to itself the power to prosecute and try the Minister of the Interior of a foreign State for crimes allegedly committed by him in connection with the exercise of his powers for the maintenance of public order in his country",

France had violated "the principle that a State may not, in breach of the principle of sovereign equality among all Members of the United Nations . . . exercise its authority on the territory of another State". The Congo further submitted that, in issuing a warrant instructing police officers to examine the President of the Republic of the Congo as witness in the case, France had violated "the criminal immunity of a foreign Head of State — an international customary rule recognized by the jurisprudence of the Court".

In its Application, the Congo indicated that it sought to found the jurisdiction of the Court, pursuant to Article 38, paragraph 5, of the Rules of Court, "on the consent of the French Republic, which [would] certainly be given". In accordance with that provision, the Congo's Application was transmitted to the French Government and no action was taken in the proceedings. By a letter dated 8 April 2003, France indicated that it "consent[ed] to the jurisdiction of the Court to entertain the Application pursuant to Article 38, paragraph 5", and the case was thus entered in the Court's List. It was the first time, since the adoption of Article 38, paragraph 5, of the Rules of Court in 1978, that a State thus accepted the invitation of another State to recognize the jurisdiction of the Court to entertain a case against it.

The Application of the Congo was accompanied by a request for the indication of a provisional measure seeking "an order for the immediate suspension of the proceedings being conducted by the investigating judge of the Meaux *Tribunal de grande instance*", and hearings on that request were held on 28 and 29 April 2003. In its Order of 17 June 2003, the Court concluded that no evidence had been placed before it of any irreparable prejudice to the rights in dispute and that, consequently, circumstances were not such as to require the exercise of its power to indicate provisional measures. By an Order of 11 July 2003, the President of the Court fixed 11 December 2003 and 11 May 2004, respectively, as the time-limits for the filing of the Memorial of the Republic of the Congo and the Counter-Memorial of France. Those pleadings were filed within the time-limits thus fixed.

By an Order dated 17 June 2004, the Court, taking account of the agreement of the Parties and of the particular circumstances of the case, authorized the submission of a Reply by the Congo and a Rejoinder by France and fixed the time-limits for the filing of those pleadings. Following four successive requests to extend the time-limit for the filing of the Reply, the President of the Court fixed the time-limits for the filing of a Reply by the Congo and a Rejoinder by France as 11 July 2006 and 11 August 2008, respectively. Those pleadings were filed within the time-limits thus extended.

By an Order of 16 November 2009, the Court, referring in particular to Article 101 of its Rules and taking into account the agreement of the Parties and the exceptional circumstances of the case, authorized the submission of an additional pleading by the Congo, followed by an additional pleading by France. It fixed 16 February 2010 and 17 May 2010 as the respective time-limits for the filing of those pleadings. Those pleadings were filed within the time-limits thus fixed.

Hearings were scheduled to open in the case on 6 December 2010, when, by a letter dated 5 November 2010, the Agent of the Congo, referring to Article 89 of the Rules of Court, informed the Court that his Government was "withdraw[ing] its Application instituting proceedings" and requested the Court "to make an Order officially recording the discontinuance of the proceedings and directing the removal of the case from the List". A copy of that letter was immediately communicated to the French Government, which responded in a letter dated 8 November 2010 that it had no objection to the discontinuance of the proceedings by the Congo. Accordingly, by an Order of 16 November 2010, the Court placed on record the discontinuance of the proceedings by the Congo and ordered that the case be removed from the List.

1.106. *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*

On 24 July 2003, Malaysia and Singapore jointly seised the Court of a dispute between them by notification of a Special Agreement signed on 6 February 2003 and which entered into force on 9 May 2003. Under the terms of that Special Agreement, the Parties requested the Court to "determine whether sovereignty over: *(a)* Pedra Branca/Pulau Batu Puteh; *(b)* Middle Rocks; and *(c)* South Ledge belongs to Malaysia or the Republic of Singapore". They agreed in advance "to accept the Judgment of the Court . . . as final and binding upon them". By an Order of 1 September 2003, taking account of Article 4 of that Special Agreement, the President of the Court fixed 25 March 2004 as the time-limit for the filing of a Memorial by each of the Parties and 25 January 2005 as the time-limit for the filing of a Counter-Memorial by each of the Parties. Those pleadings were duly filed within the time-limits thus fixed.

By an Order of 1 February 2005, the Court, taking into account the provisions of the Special Agreement, fixed 25 November 2005 as the time-limit for the filing of a Reply by each of the Parties. The Replies were duly filed within the time-limit thus fixed. By a joint letter of 23 January 2006, the Parties informed the Court that they had agreed that there was no need for an exchange of rejoinders in the case

The Court itself subsequently decided that no further pleadings were necessary and thus that the written proceedings were closed.

Following public hearings which were held in November 2007, the Court rendered its Judgment on 23 May 2008. In that Judgment, the Court first indicated that the Sultanate of Johor (predecessor of Malaysia) had original title to Pedra Branca/Pulau Batu Puteh, a granite island on which Horsburgh lighthouse stands. It concluded, however, that, when the dispute crystallized (1980), title had passed to Singapore, as attested to by the conduct of the Parties (in particular certain acts performed by Singapore *à titre de souverain* and the failure of Malaysia to react to the conduct of Singapore). The Court consequently awarded sovereignty over Pedra Branca/Pulau Batu Puteh to Singapore. As for Middle Rocks, a maritime feature consisting of several rocks permanently above water, the Court observed that the particular circumstances which had led it to find that sovereignty over Pedra Branca/Pulau Batu Puteh rested with Singapore clearly did not apply to Middle Rocks. It therefore found that Malaysia, as the successor to the Sultan of Johor, should be considered to have retained original title to Middle Rocks. Finally, with respect to the low-tide elevation South Ledge, the Court noted that it fell within the apparently overlapping territorial waters generated by Pedra Branca/Pulau Batu Puteh and by Middle Rocks. Recalling that it had not been mandated by the Parties to delimit their territorial waters, the Court concluded that sovereignty over South Ledge belongs to the State in whose territorial waters it lies.

1.107. Maritime Delimitation in the Black Sea (Romania v. Ukraine)

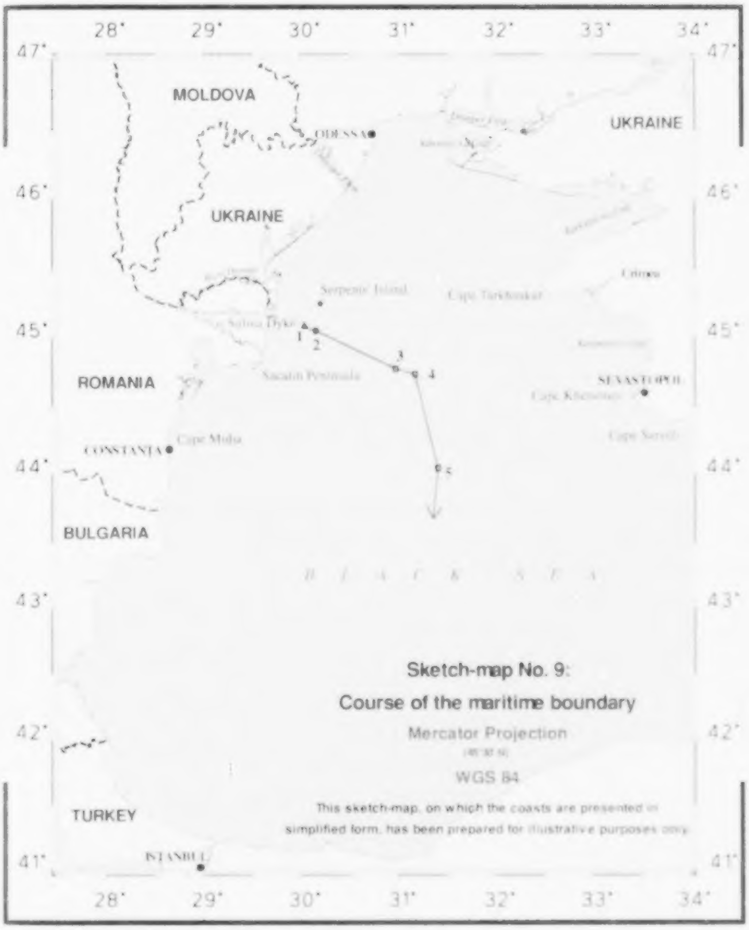
On 16 September 2004, Romania filed an Application instituting proceedings against Ukraine in respect of a dispute concerning "the establishment of a single maritime boundary between the two States in the Black Sea, thereby delimiting the continental shelf and the exclusive economic zones appertaining to them". The Memorial of Romania and the Counter-Memorial of Ukraine were filed within the time-limits fixed by an Order of 19 November 2004. By an Order of 30 June 2006, the Court authorized the filing of a Reply by Romania and a Rejoinder by Ukraine and fixed 22 December 2006 and 15 June 2007 as the respective time-limits for the filing of those pleadings. Romania filed its Reply within the time-limit thus fixed. By an Order of 8 June 2007, the Court extended to 6 July 2007 the time-limit for the filing of the Rejoinder by Ukraine. The Rejoinder was filed within the time-limit thus extended.

Following public hearings held in September 2008, the Court rendered its Judgment in the case on 3 February 2009. On the basis of established State practice and of its own jurisprudence, the Court declared itself bound by the three-step approach laid down by maritime delimitation law, which consisted first of establishing a provisional equidistance line, then of considering factors which might call for an adjustment of that line and adjusting it accordingly and, finally, of confirming that the line thus adjusted would not lead to an inequitable result by comparing the ratio of coastal lengths with the ratio of relevant maritime areas.

In keeping with this approach, the Court first established a provisional equidistance line. In order to do so, it was obliged to determine appropriate base points. After examining at length the characteristics of each base point chosen by the Parties for the establishment of the provisional equidistance line, the Court decided to use the Sacalin Peninsula and the landward end of the Sulina dyke on the Romanian coast, and Tsyganka Island, Cape Tarkhankut and Cape Khersones on the Ukrainian coast. It considered it inappropriate to select any base points on Serpents' Island (belonging to Ukraine). The Court then proceeded to establish the provisional equidistance line as follows:

> "In its initial segment the provisional equidistance line between the Romanian and Ukrainian adjacent coasts is controlled by base points located on the landward end of the Sulina dyke on the Romanian coast and south-eastern tip of Tsyganka Island on the Ukrainian coast. It runs in a south-easterly direction, from a point lying midway between these two base points, until Point A (with co-ordinates 44° 46' 38.7" N and 30° 58' 37.3" E) where it becomes affected by a base point located on the Sacalin Peninsula on the Romanian coast. At Point A the equidistance line slightly changes direction and continues to Point B (with co-ordinates 44° 44' 13.4" N and 31° 10' 27.7" E) where it becomes affected by the base point located on Cape Tarkhankut on Ukraine's opposite coasts. At Point B the equidistance line turns south-south-east and continues to Point C (with co-ordinates 44° 02' 53.0" N and 31° 24' 35.0" E), calculated with reference to base points on the Sacalin Peninsula on the Romanian coast and Capes Tarkhankut and Khersones on the Ukrainian coast. From Point C the equidistance line, starting at an azimuth of 185° 23' 54.5", runs in a southerly direction. This line remains governed by the base points on the Sacalin Peninsula on the Romanian coast and Cape Khersones on the Ukrainian coast."

The Court then turned to the examination of relevant circumstances which might call for an adjustment of the provisional equidistance line, considering six potential factors: (1) the possible disproportion between coastal lengths; (2) the enclosed nature of the Black Sea and the delimitations already effected in the region; (3) the presence of Serpents' Island in the area of delimitation; (4) the conduct of the Parties (oil and gas concessions, fishing activities and naval patrols); (5) any potential curtailment of the continental shelf or exclusive economic zone entitlement of one of the Parties; and (6) certain security considerations of the Parties. The Court did not see in these various factors any reason that would justify the adjustment of the provisional equidistance line. In particular with respect to Serpents' Island, it considered that it should have no effect on the delimitation other than that stemming from the role of the 12-nautical-mile arc of its territorial sea.


28°
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MOLDOVA
ODESSA
UKRAINE
UKRAINE
Serpents' Island
Cape Tarkhankut
Crimea
Sulina Dyke
1
2
3
4
5
Sacalin Peninsula
ROMANIA
SEVASTOPOL
Cape Khersones
Cape Sarych
CONSTANTA
Cape Midia
BULGARIA
BLACK SEA
TURKEY
ISTANBUL

Sketch-map No. 9:

Course of the maritime boundary

Mercator Projection

(45°30' N)

WGS 84

This sketch-map, on which the coasts are presented in simplified form, has been prepared for illustrative purposes only.

Finally, the Court confirmed that the line would not lead to an inequitable result by comparing the ratio of coastal lengths with the ratio of relevant maritime areas. The Court noted that the ratio of the respective coastal lengths for Romania and Ukraine was approximately 1:2.8 and the ratio of the relevant maritime areas was approximately 1:2.1.

In the operative clause of its Judgment, the Court found unanimously that:

> "starting from Point 1, as agreed by the Parties in Article 1 of the 2003 State Border Regime Treaty, the line of the single maritime boundary delimiting the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea shall follow the 12-nautical-mile arc of the territorial sea of Ukraine around Serpents' Island until Point 2 (with co-ordinates 45° 03' 18.5" N and 30° 09' 24.6" E) where the arc intersects with the line equidistant from Romania's and Ukraine's adjacent coasts. From Point 2 the boundary line shall follow the equidistance line through Points 3 (with co-ordinates 44° 46' 38.7" N and 30° 58' 37.3" E) and 4 (with co-ordinates 44° 44' 13.4" N and 31° 10' 27.7" E) until it reaches Point 5 (with co-ordinates 44° 02' 53.0" N and 31° 24' 35.0" E). From Point 5 the maritime boundary line shall continue along the line equidistant from the opposite coasts of Romania and Ukraine in a southerly direction starting at a geodetic azimuth of 185° 23' 54.5" until it reaches the area where the rights of third States may be affected."

See the sketch-map on page 213 for an illustration of the maritime frontier.

1.108. *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*

On 29 September 2005, Costa Rica filed an Application instituting proceedings against Nicaragua in a dispute concerning the navigational and related rights of Costa Rica on a section of the San Juan River, the southern bank of which forms the boundary between the two States provided for by an 1858 bilateral treaty. In its Application, Costa Rica affirmed that "Nicaragua has — in particular since the late 1990s — imposed a number of restrictions on the navigation of Costa Rican boats and their passengers on the San Juan River", in violation of Article VI of the 1858 Treaty, which "granted to Nicaragua sovereignty over the waters of the San Juan River, recognizing at the same time important rights to Costa Rica".

Costa Rica filed its Memorial and Nicaragua its Counter-Memorial within the time-limits fixed by the Court's Order of 29 November 2005. By an Order of 9 October 2007, the Court authorized the submission of a Reply by Costa Rica and a Rejoinder by Nicaragua. Those pleadings were filed within the prescribed time-limits.

Following public hearings held in March 2009, the Court rendered its Judgment on 13 July 2009.

As regards Costa Rica's navigational rights on the San Juan River under the 1858 Treaty, in that part where navigation is common, the Court ruled that Costa Rica had the right of free navigation on the San Juan River for purposes of commerce; that the right of navigation for purposes of commerce enjoyed by Costa Rica included the transport of passengers; that the right of navigation for purposes of commerce enjoyed by Costa Rica included the transport of tourists; that persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica's right of free navigation were not required to obtain Nicaraguan visas; that persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica's right of free navigation were not required to purchase Nicaraguan tourist cards; that the inhabitants of the Costa Rican bank of the San Juan River had the right to navigate on the river between the riparian communities for the purposes of fulfilling essential needs of everyday life; that Costa Rica had the right of navigation on the San Juan River with official vessels used solely, in specific situations, to provide essential services for the inhabitants of the riparian areas where expeditious transportation is a condition for meeting the inhabitants' requirements; that Costa Rica did not have the right of navigation on the San Juan River with vessels carrying out police functions; that Costa Rica did not have the right of navigation on the San Juan River for the purposes of the exchange of personnel among the police border posts along the right bank of the river or for the re-supply of these posts, with official equipment, including service arms and ammunition.

As regards Nicaragua's right to regulate navigation on the San Juan River, in that part where navigation is common, the Court found that Nicaragua had the right to require Costa Rican vessels and their passengers to stop at the first and last Nicaraguan post on their route along the San Juan River; that Nicaragua had the right to require persons travelling on the San Juan River to carry a passport or an identity document; that Nicaragua had the right to issue departure clearance certificates to Costa Rican vessels exercising Costa Rica's right of free navigation but did not have the right to request the payment of a charge for the issuance of such certificates; that Nicaragua had the right to impose timetables for navigation on vessels navigating on the San Juan River; and that Nicaragua had the right to require Costa Rican vessels fitted with masts or turrets to display the Nicaraguan flag.

As regards subsistence fishing, the Court found that fishing by the inhabitants of the Costa Rican bank of the San Juan River for subsistence purposes from that bank must be respected by Nicaragua as a customary right.

As regards Nicaragua's compliance with its international obligations under the 1858 Treaty, the Court found that Nicaragua was not acting in accordance with its obligations under the 1858 Treaty when it required persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica's right of free navigation to obtain Nicaraguan visas; that Nicaragua was not acting in accordance with its obligations under the 1858 Treaty when it required persons travelling on the San Juan River on board Costa Rican vessels exercising Costa Rica's right of free navigation to purchase Nicaraguan tourist cards; and that Nicaragua was not acting in accordance with its obligations under the 1858 Treaty when it required the operators of vessels exercising Costa Rica's right of free navigation to pay charges for departure clearance certificates.

The Court rejected all the other submissions presented by Costa Rica and Nicaragua.

1.132. *Status vis-à-vis the Host State of a Diplomatic Envoy to the United Nations (Commonwealth of Dominica v. Switzerland)*

On 26 April 2006, the Commonwealth of Dominica filed an Application instituting proceedings against Switzerland concerning alleged violations by the latter of the Vienna Convention on Diplomatic Relations, as well of other international instruments and rules, with respect to a diplomatic envoy of Dominica to the United Nations in Geneva.

In its Application, Dominica stated that the diplomat in question, Mr. Roman Lakschin, had been accredited to the United Nations and its Specialized Agencies and to the World Trade Organization (WTO) since March 1996 as a member of the Permanent Mission of Dominica to the United Nations in Geneva (first as Counsellor, later as *Chargé d'affaires* and Deputy Permanent Representative with the rank of Ambassador). Dominica further emphasized that this accreditation was "effected to the organizations and not to Switzerland", but that, nevertheless, Switzerland had "claimed the right to withdraw the accreditation" of the said envoy, "stating that [he] is a 'businessman' and [that] as such he would have no right to be a diplomat".

By letter of 15 May 2006, the Prime Minister of the Commonwealth of Dominica informed the Court that his Government "did not wish to go on with the proceedings instituted against Switzerland" and requested the Court to make an Order "officially recording [their] unconditional discontinuance" and "directing the removal of the case from the General List". By letter of 24 May 2006, the Swiss Ambassador in The Hague advised the Court that he had informed the competent Swiss authorities of the discontinuance as thus notified. Accordingly, on 9 June 2006, the Court made an Order in which, after noting that the Government of the Swiss Confederation had not taken any step in the proceedings in the case, it recorded the discontinuance of the proceedings by the Commonwealth of Dominica and ordered that the case be removed from the List.

1.133. *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*

On 4 May 2006, Argentina filed an Application instituting proceedings against Uruguay concerning alleged breaches by Uruguay of obligations incumbent upon it under the Statute of the River Uruguay, a treaty signed by the two States on

26 February 1975 (hereinafter "the 1975 Statute") for the purpose of establishing the joint machinery necessary for the optimum and rational utilization of that part of the river which constitutes their joint boundary. In its Application, Argentina charged Uruguay with having unilaterally authorized the construction of two pulp mills on the River Uruguay without complying with the obligatory prior notification and consultation procedures under the 1975 Statute. Argentina claimed that those mills posed a threat to the river and its environment and were likely to impair the quality of the river's waters and to cause significant transboundary damage to Argentina. As basis for the Court's jurisdiction, Argentina invoked the first paragraph of Article 60 of the 1975 Statute, which provides that any dispute concerning the interpretation or application of that Statute which cannot be settled by direct negotiations may be submitted by either party to the Court.

Argentina's Application was accompanied by a request for the indication of provisional measures, whereby Argentina asked that Uruguay be ordered to suspend the authorizations for construction of the mills and all building works pending a final decision by the Court; to co-operate with Argentina with a view to protecting and conserving the aquatic environment of the River Uruguay; and to refrain from taking any further unilateral action with respect to the construction of the two mills incompatible with the 1975 Statute, and from any other action which might aggravate the dispute or render its settlement more difficult. Public hearings on the request for the indication of provisional measures were held on 8 and 9 June 2006. By an Order of 13 July 2006, the Court found that the circumstances, as they then presented themselves to it, were not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

On 29 November 2006, Uruguay in turn submitted a request for the indication of provisional measures on the grounds that, from 20 November 2006, organized groups of Argentine citizens had blockaded a "vital international bridge" over the River Uruguay, that that action was causing it considerable economic prejudice and that Argentina had made no effort to end the blockade. At the end of its request, Uruguay asked the Court to order Argentina to take "all reasonable and appropriate steps . . . to prevent or end the interruption of transit between Uruguay and Argentina, including the blockading of bridges or roads between the two States"; to abstain "from any measure that might aggravate, extend or make more difficult the settlement of this dispute"; and to abstain "from any other measure which might prejudice the rights of Uruguay in dispute before the Court". Public hearings on the request for the indication of provisional measures were held on 18 and 19 December 2006. By an Order of 23 January 2007, the Court found that the circumstances, as they then presented themselves to it, were not such as to require the exercise of its power under Article 41 of the Statute.

Argentina filed its Memorial and Uruguay its Counter-Memorial within the time-limits fixed by the Order of 13 July 2006. By an Order of 14 September 2007, the Court authorized the submission of a Reply by Argentina and a Rejoinder by Uruguay. Those pleadings were filed within the prescribed time-limits.

Following public hearings held between 14 September 2009 and 2 October 2009, the Court delivered its Judgment on 20 April 2010. With respect to Argentina's argument that projects had been authorized by Uruguay in violation of the mechanism for prior notification and consultation laid down by Articles 7 to 12 of the 1975 Statute (the procedural violations), the Court noted that Uruguay had not informed the Administrative Commission of the River Uruguay of the projects as prescribed in the Statute. The Administrative Commission of the River Uruguay — commonly referred to by its Spanish acronym "CARU" — is a body established under the Statute for the purpose of monitoring the river, including assessing the impact of proposed projects on the river. The Court concluded that by not informing CARU of the planned works before the issuing of the initial environmental authorizations for each of the mills and for the port terminal adjacent to the Orion (Botnia) mill, and by failing to notify the plans to Argentina through CARU, Uruguay had violated the 1975 Statute.

With respect to Argentina's contention that the industrial activities authorized by Uruguay had had, or would have, an adverse impact on the quality of the waters of the river and the area affected by it, and had caused significant damage to the quality of the waters of the river and significant transboundary damage to Argentina (the substantive violations), the Court found, based on a detailed examination of the Parties' arguments, that there was

> "no conclusive evidence in the record to show that Uruguay has not acted with the requisite degree of due diligence or that the discharges of effluent from the Orion (Botnia) mill have had deleterious effects or caused harm to living resources or to the quality of the water or the ecological balance of the river since it started its operations in November 2007".

Consequently, the Court concluded that Uruguay had not breached substantive obligations under the Statute. In addition to this finding, however, the Court emphasized that, under the 1975 Statute, "[t]he Parties have a legal obligation … to continue their co-operation through CARU and to enable it to devise the necessary means to promote the equitable utilization of the river, while protecting its environment".

131. *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*

On 9 January 2006, the Republic of Djibouti filed an Application against the French Republic in respect of a dispute:

> "concern[ing] the refusal by the French governmental and judicial authorities to execute an international letter rogatory regarding the transmission to the judicial authorities in Djibouti of the record relating to the investi-

> gation in the Case against X for the murder of Bernard Borrel, in violation of the Convention on Mutual Assistance in Criminal Matters between the [Djiboutian] Government and the [French] Government, of 27 September 1986, and in breach of other international obligations borne by [France] to … Djibouti".

In its Application, Djibouti also alleged that these acts constituted a violation of the Treaty of Friendship and Co-operation concluded between France and Djibouti on 27 June 1977. Djibouti indicated that it sought to found the jurisdiction of the Court on Article 38, paragraph 5, of the Rules of Court. This provision applies when a State submits a dispute to the Court, proposing to found the Court's jurisdiction upon a consent yet to be given or manifested by the State against which the Application is made. This was the second occasion that the Court had been called upon to pronounce on a dispute brought before it by an Application based on Article 38, paragraph 5, of its Rules (*forum prorogatum*). France consented to the jurisdiction of the Court by a letter, dated 25 July 2006, in which it specified that this consent was "valid only for the purposes of the case, within the meaning of Article 38, paragraph 5, i.e., in respect of the dispute forming the subject of the Application and strictly within the limits of the claims formulated therein" by Djibouti. However, the Parties disagreed as to the exact extent of the consent given by France.

In a Judgment rendered on 4 June 2008, the Court, having read Djibouti's Application together with France's letter in order to determine the extent of the mutual consent of the Parties, concluded that *(a)* it had jurisdiction to adjudicate upon the dispute concerning the execution of the letter rogatory addressed by the Republic of Djibouti to the French Republic on 3 November 2004; *(b)* it had jurisdiction to adjudicate upon the dispute concerning the summons addressed to the President of the Republic of Djibouti on 17 May 2005 and the summonses addressed to two senior Djiboutian officials on 3 and 4 November 2004 and 17 June 2005; *(c)* it had jurisdiction to adjudicate upon the dispute concerning the summons addressed to the President of the Republic of Djibouti on 14 February 2007; and *(d)* it had no jurisdiction to adjudicate upon the dispute concerning the arrest warrants issued against two senior Djiboutian officials on 27 September 2006.

Having established the precise scope of its jurisdiction in the case, the Court turned first to the alleged violation by France of the Treaty of Friendship and Co-operation between France and Djibouti of 27 June 1977. While pointing out that the provisions of the said Treaty constituted relevant rules of international law having "a certain bearing" on relations between the Parties, the Court concluded that "the fields of co-operation envisaged in th[at] Treaty do not include co-operation in the judicial field" and thus that the above-mentioned relevant rules imposed no concrete obligations in this case.

The Court then turned to the allegation that France had violated its obligations under the 1986 Convention on Mutual Assistance in Criminal Matters. Under that Convention, judicial co-operation is envisaged, including the requesting and granting of "letters rogatory" (usually the passing, for judicial purposes, of information held by a party). The Convention also provides for exceptions to this envisaged co-operation. Since the French judicial authorities refused to transmit the requested case file, a key question in the case was whether that refusal fell within the permitted exceptions. Also at issue was whether France had complied with the provisions of the 1986 Convention in other respects. The Court held that the reasons given by the French investigating judge for refusing the request for mutual assistance fell within the scope of Article 2 *(c)* of the Convention, which entitles the requested State to refuse to execute a letter rogatory if it considers that that execution is likely to prejudice its sovereignty, its security, its *ordre public* or other of its essential interests. The Court did however conclude that, as no reasons were given in the letter dated 6 June 2005, whereby France informed Djibouti of its refusal to execute the letter rogatory presented by the latter on 3 November 2004, France had failed to comply with its international obligations under Article 17 of the 1986 Convention.

177. *Maritime Dispute (Peru v. Chile)*

On 16 January 2008, Peru filed an Application instituting proceedings against Chile concerning a dispute in relation to "the delimitation of the boundary between the maritime zones of the two States in the Pacific Ocean, beginning at a point on the coast called Concordia . . . the terminal point of the land boundary established pursuant to the Treaty . . . of 3 June 1929", and also to the recognition in favour of Peru of a "maritime zone lying within 200 nautical miles of Peru's coast, and thus appertaining to Peru, but which Chile considers to be part of the high seas". In its Application, Peru claimed that "the maritime zones between Chile and Peru have never been delimited by agreement or otherwise" and that, accordingly, "the delimitation is to be determined by the Court in accordance with customary international law".

As basis for the Court's jurisdiction, Peru invoked Article XXXI of the Pact of Bogotá of 30 April 1948, to which both States were parties without reservation.

By an Order of 31 March 2008, the Court fixed 20 March 2009 and 9 March 2010 as the respective time-limits for the filing of a Memorial by Peru and a Counter-Memorial by Chile. Those pleadings were filed within the time-limits thus prescribed. Colombia and Ecuador, relying on Article 53, paragraph 1, of the Rules of Court, requested copies of the pleadings and annexed documents produced in the case. The Court, after ascertaining the views of the Parties, acceded to those requests.

By an Order of 27 April 2010, the Court authorized the submission of a Reply by Peru and a Rejoinder by Chile. It fixed 9 November 2010 and 11 July 2011 as the respective time-limits for the filing of those pleadings. On 10 January 2011, relying on Article 53, paragraph 1, of the Rules of Court, the Plurinational State of Bolivia requested that its Government be furnished with copies of the pleadings and annexed documents produced in the case. After ascertaining the views of the Parties, the Court acceded to that request.

Public hearings were held by the Court in December 2012, after which the Court began its deliberation.

(133) *Aerial Herbicide Spraying (Ecuador v. Colombia)*

On 31 March 2008, Ecuador filed an Application instituting proceedings against Colombia in respect of a dispute concerning the alleged "aerial spraying [by Colombia] of toxic herbicides at locations near, at and across its border with Ecuador". Ecuador maintained that "the spraying has already caused serious damage to people, to crops, to animals, and to the natural environment on the Ecuadorian side of the frontier, and poses a grave risk of further damage over time". It further contended that it had made "repeated and sustained efforts to negotiate an end to the fumigations" but that "these negotiations have proved unsuccessful". As basis for the Court's jurisdiction, Ecuador invoked Article XXXI of the Pact of Bogotá of 30 April 1948, to which both States were parties. Ecuador also relied on Article 32 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

By an Order of 30 May 2008, the Court fixed 29 April 2009 and 29 March 2010 as the respective time-limits for the filing of a Memorial by Ecuador and a Counter-Memorial by Colombia. Those pleadings were filed within the time-limits thus prescribed. By an Order of 25 June 2010, the Court directed the submission of a Reply by Ecuador and a Rejoinder by Colombia. It fixed 31 January 2011 and 1 December 2011, respectively, as the time-limits for the filing of those pleadings. The Reply of Ecuador was filed within the time-limit thus fixed. Further to a request from Colombia asking the Court to extend the time-limit fixed for the filing of the Rejoinder, by an Order of 19 October 2011, the President of the Court, taking into account the views of the Parties, extended the original time-limit to 1 February 2012. The Rejoinder of Colombia was filed within the time-limit thus extended.

By a letter dated 12 September 2013, the Agent of Ecuador, referring to Article 89 of the Rules of Court and to an Agreement between the Parties dated 9 September 2013 "that fully and finally resolves all of Ecuador's claims against Colombia" in the case, notified the Court that his Government wished to discontinue the proceedings in the case. By a letter of the same date, the Agent of Colombia informed the Court, pursuant to Article 89, paragraph 2, of the Rules of Court, that it made no objection to the discontinuance of the case as requested by Ecuador.

According to the letters received from the Parties, the Agreement of 9 September 2013 established, *inter alia*, an exclusion zone, in which Colombia would not conduct aerial spraying operations, created a Joint Commission to ensure that spraying operations outside that zone had not caused herbicides to drift into Ecuador and, so long as they had not, provided a mechanism for the gradual reduction in the width of the said zone; according to the letters, the Agreement set out operational parameters for Colombia's spraying programme, recorded the agreement of the two Governments to ongoing exchanges of information in that regard, and established a dispute settlement mechanism.

In consequence, the President of the Court, on 13 September 2013, made an Order recording the discontinuance by Ecuador of the proceedings and directing the removal of the case from the Court's List.

1.114. Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America)

On 5 June 2008, Mexico filed an Application instituting proceedings against the United States of America, requesting the Court to interpret paragraph 153 (9) of its Judgment of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)* (see No. 1.104 above), in which it had laid down the remedial obligations incumbent upon the United States, namely "to provide, by means of its own choosing, review and reconsideration of the convictions and sentences" of the Mexican nationals at issue in that case. Mexico claimed that a dispute had arisen between the Parties as to the scope and meaning of paragraph 153 (9) and asked for an interpretation as to whether paragraph 153 (9) expressed an obligation of result and, pursuant to that obligation of result, requested the Court to order that the United States ensure that no Mexican national covered under the *Avena* Judgment would be executed unless and until the review and reconsideration was completed and it was determined that no prejudice resulted from the violation.

On the same day, Mexico also filed a Request for the indication of provisional measures in order "to preserve the rights of Mexico and its nationals" pending the Court's Judgment in the proceedings on the interpretation of the *Avena* Judgment. By an Order of 16 July 2008, the Court indicated the following provisional measures:

> "(*a*) The United States of America shall take all measures necessary to ensure that Messrs. José Ernesto Medellín Rojas, César Roberto Fierro Reyna, Rubén Ramírez Cárdenas, Humberto Leal García, and Roberto Moreno Ramos are not executed pending judgment on the Request for interpretation submitted by the United Mexican States, unless and until these five Mexican nationals receive review and reconsideration consistent with paragraphs 138 to 141 of the Court's

> Judgment delivered on 31 March 2004 in the case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)*;
>
> *(b)* The Government of the United States of America shall inform the Court of the measures taken in implementation of this Order."

Following the submission of written observations by the United States of America and of further written explanations by both Parties, the Court delivered its Judgment on Mexico's Request for interpretation on 19 January 2009. The Court stated that its interpretative jurisdiction was founded on Article 60 of the Court's Statute, which provides that "[i]n the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party". A key question which arose in this case was whether a dispute did in fact exist between the Parties as to the meaning or scope of paragraph 153 (9) of the *Avena* Judgment. The United States argued that no dispute existed between it and Mexico for the purposes of Article 60, because the United States Executive Branch shared Mexico's understanding that the *Avena* Judgment established an obligation of result. For its part, Mexico argued that the United States "does not share Mexico's view of the *Avena* Judgment — that is, that the operative language establishes an obligation of result reaching all organs, including the federal and state judiciaries".

In its Judgment on the Request for interpretation, the Court reviewed both of these positions in detail, finding certain merits to each argument. Ultimately, however, the Court concluded that "there would be a further obstacle to granting the request of Mexico even if a dispute in the present case were ultimately found to exist". In particular, the Court explained that:

> "[t]he *Avena* Judgment nowhere lays down or implies that the courts in the United States are required to give direct effect to paragraph 153 (9). The obligation laid down in that paragraph is indeed an obligation of result which clearly must be performed unconditionally; non-performance of it constitutes internationally wrongful conduct. However, the Judgment leaves it to the United States to choose the means of implementation, not excluding the introduction within a reasonable time of appropriate legislation, if deemed necessary under domestic constitutional law. Nor moreover does the *Avena* Judgment prevent direct enforceability of the obligation in question, if such an effect is permitted by domestic law. In short, the question is not decided in the Court's original Judgment and thus cannot be submitted to it for interpretation under Article 60 of the Statute."

The Court thus found that Mexico's Request for interpretation dealt not with the "meaning or scope" of the *Avena* judgment as Article 60 required, but rather with "the general question of the effects of a judgment of the Court in the domestic legal order of the States parties to the case in which the judgment was delivered". Thus, the Court considered that "[b]y virtue of its general nature, the question underlying Mexico's Request for interpretation is outside the jurisdiction specifically conferred upon the Court by Article 60" and that "[w]hether or not there is a dispute, it does not bear on the interpretation of the *Avena* Judgment, in particular of paragraph 153 (9)." The Court therefore concluded that it could not accede to Mexico's Request for interpretation.

110. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*

On 12 August 2008, the Republic of Georgia instituted proceedings before the Court against the Russian Federation relating to "its actions on and around the territory of Georgia in breach of CERD [the 1965 International Convention on the Elimination of All Forms of Racial Discrimination]". Georgia claimed that

> "the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, and through the South Ossetian and Abkhaz separatist forces and other agents acting on the instructions of, and under the direction and control of the Russian Federation, is responsible for serious violations of its fundamental obligations under CERD, including Articles 2, 3, 4, 5 and 6".

According to Georgia, the Russian Federation "has violated its obligations under CERD during three distinct phases of its interventions in South Ossetia and Abkhazia", in the period from 1990 to August 2008. Georgia requested the Court to order "the Russian Federation to take all steps necessary to comply with its obligations under CERD". As a basis for the jurisdiction of the Court, Georgia relied on Article 22 of the Convention on the Elimination of All Forms of Racial Discrimination.

Georgia's Application was accompanied by a request for the indication of provisional measures in order "to preserve [its] rights under CERD to protect its citizens against violent discriminatory acts by Russian armed forces, acting in concert with separatist militia and foreign mercenaries".

On 15 August 2008, having considered the gravity of the situation, the President of the Court, acting under Article 74, paragraph 4, of the Rules of Court, urgently called upon the Parties "to act in such a way as will enable any order the Court may take on the request for provisional measures to have its appropriate effects".

Following public hearings that were held from 8 to 10 October 2008, the Court issued an Order on the request for the indication of provisional measures submitted by Georgia. The Court found that it had prima facie jurisdiction under Article 22 of CERD to deal with the case and could accordingly address the request for the indication of provisional measures. The Court ordered the Parties,

> "within South Ossetia and Abkhazia and adjacent areas in Georgia, [to] refrain from any act of racial discrimination against persons, groups of

> persons or institutions; [to] abstain from sponsoring, defending or supporting racial discrimination by any persons or organizations; [to] do all in their power . . . to ensure, without distinction as to national or ethnic origin, (i) security of persons; (ii) the right of persons to freedom of movement and residence within the border of the State; (iii) the protection of the property of displaced persons and of refugees . . . [and to] do all in their power to ensure that public authorities and public institutions under their control or influence do not engage in acts of racial discrimination against persons, groups of persons or institutions".

The Court also indicated that "[e]ach Party shall refrain from any action which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve". Finally, the Court ordered each Party to "inform [it] as to its compliance with the . . . provisional measures".

By an Order of 2 December 2008, the President fixed 2 September 2009 as the time-limit for the filing of a Memorial by Georgia and 2 July 2010 as the time-limit for the filing of a Counter-Memorial by the Russian Federation. On 1 December 2009, the Russian Federation filed four preliminary objections in respect of jurisdiction. By an Order of 11 December 2009, the Court fixed 1 April 2010 as the time-limit for the filing by Georgia of a written statement containing its observations and submissions on the preliminary objections raised by the Russian Federation.

In its Judgment of 1 April 2011, the Court began by considering the Russian Federation's first preliminary objection, according to which there had been no dispute between the Parties regarding the interpretation or application of CERD at the date Georgia filed its Application. It concluded that none of the documents or statements provided any basis for a finding that there had been a dispute about racial discrimination by July 1999. It followed from the general finding of the Court and the specific findings made with regard to each document and statement that Georgia had not, in the Court's opinion, cited any document or statement made before it became party to CERD in July 1999, which provided support for its contention that "the dispute with Russia over ethnic cleansing is long-standing and legitimate and not of recent invention". The Court added that even if that had been the case, such dispute, though about racial discrimination, could not have been a dispute with respect to the interpretation or application of CERD, the only kind of dispute in respect of which the Court is given jurisdiction by Article 22 of that Convention. However, the Court concluded that the exchanges between the Georgian and Russian representatives in the Security Council on 10 August 2008, the claims made by the Georgian President on 9 and 11 August and the response on 12 August by the Russian Foreign Minister established that by that day, the day on which Georgia submitted its Application, there had been a dispute between Georgia and the Russian Federation about the latter's compliance with its obligations under CERD as invoked by Georgia in the case. The first preliminary objection of the Russian Federation was accordingly dismissed.

In its second preliminary objection, the Russian Federation had argued that the procedural requirements of Article 22 of CERD for recourse to the Court had not been fulfilled. According to this provision,

> "[a]ny dispute between two or more States parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement".

First of all, the Court noted that Georgia did not claim that, prior to seising the Court, it had used or attempted to use the procedures expressly provided for in CERD. The Court therefore limited its examination to the question of whether the precondition of negotiations had been fulfilled.

In determining what constitutes negotiations, the Court observed that negotiations are distinct from mere protests or disputations. Negotiations entail more than the plain opposition of legal views or interests between two parties, or the existence of a series of accusations and rebuttals, or even the exchange of claims and directly opposed counter-claims. As such, the concept of "negotiations" differs from the concept of "dispute", and requires — at the very least — a genuine attempt by one of the disputing parties to engage in discussions with the other disputing party, with a view to resolving the dispute. The Court further noted that evidence of such an attempt to negotiate — or of the conduct of negotiations — does not require the reaching of an actual agreement between the disputing parties.

Accordingly, the Court assessed whether Georgia had genuinely attempted to engage in negotiations with the Russian Federation, with a view to resolving their dispute concerning the Russian Federation's compliance with its substantive obligations under CERD. The Court noted that, were it to find that Georgia had genuinely attempted to engage in such negotiations with the Russian Federation, it would subsequently examine whether Georgia had pursued those negotiations as far as possible with a view to settling the dispute. To make that determination, the Court said that it needed to ascertain whether the negotiations had failed, become futile, or reached a deadlock before Georgia submitted its claim to the Court. After considering the Parties' arguments on the question, the Court recalled its conclusions regarding the Russian Federation's first preliminary objection, as it was directly connected to the Russian Federation's second preliminary objection. The Court observed that negotiations had taken place between Georgia and the Russian Federation before the start of the relevant dispute. Those negotiations had involved several matters of importance to the relationship between Georgia and the Russian Federation, namely, the status of South Ossetia and Abkhazia, the territorial integrity of Georgia, the threat or use of force, the alleged breaches of international humanitarian law and of human rights law by Abkhaz or South Ossetian authorities and the role of the Russian Federation's peacekeepers. However, in the absence of a dispute relating to matters falling under CERD prior to 9 August 2008, those negotiations could not be said to have covered such matters and were thus of no relevance to the Court's examination of the Russian Federation's second preliminary objection. The Court accordingly concluded that neither requirement contained in Article 22 had been satisfied. Article 22 of CERD thus could not serve to found the Court's jurisdiction in the case. The second preliminary objection of the Russian Federation was therefore upheld.

Having upheld the second preliminary objection of the Russian Federation, the Court found that it was required neither to consider nor to rule on the other objections to its jurisdiction raised by the Respondent and that the case could not proceed to the merits phase. Accordingly, the Order of 15 October 2008 indicating provisional measures ceased to be operative upon the delivery of the Judgment of the Court.

(18) *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*

On 17 November 2008, the former Yugoslav Republic of Macedonia filed in the Registry of the Court an Application instituting proceedings against the Hellenic Republic in respect of a dispute concerning the interpretation and implementation of the Interim Accord of 13 September 1995. In particular, the Applicant sought to establish that, by objecting to the Applicant's admission to NATO, the Respondent had breached Article 11, paragraph 1, of the said Accord, which provides that:

> "Upon entry into force of this Interim Accord, the Party of the First Part agrees not to object to the application by or the membership of the Party of the Second Part in international, multilateral and regional organizations and institutions of which the Party of the First Part is a member; however, the Party of the First Part reserves the right to object to any membership referred to above if and to the extent the Party of the Second Part is to be referred to in such organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)."

In paragraph 2 of resolution 817, the Security Council recommended that the Applicant be admitted to membership in the United Nations, being "provisionally referred to for all purposes within the United Nations as 'the former Yugoslav Republic of Macedonia' pending settlement of the difference that has arisen over the name of the State". In the period following the adoption of the Interim Accord, the Applicant was granted membership in a number of international organizations of which the Respondent was already a member. The Applicant's NATO candidacy was considered in a meeting of NATO member States in Bucharest (hereinafter the "Bucharest Summit") on 2 and 3 April 2008 but the Applicant was not invited to begin talks on accession to the organization. The communiqué issued at the end of the Summit stated that an invitation would be extended to the Applicant "as soon as a mutually acceptable solution to the name issue has been reached".

By an Order of 20 January 2009, the Court fixed 20 July 2009 as the time-limit for the filing of a Memorial by the former Yugoslav Republic of Macedonia and 20 January 2010 as the time-limit for the filing of a Counter-Memorial by Greece. By an Order of 12 March 2010, the Court authorized the submission of a Reply by the former Yugoslav Republic of Macedonia and a Rejoinder by Greece. It fixed 9 June 2010 and 27 October 2010 as the respective time-limits for the filing of those pleadings.

In its Judgment of 5 December 2011, the Court first addressed the Respondent's claim that the Court had no jurisdiction to entertain the case and that the Application was inadmissible for several reasons. The Court upheld none of those objections and concluded that it had jurisdiction over the dispute and that the Application was admissible.

In respect of the first objection raised by the Respondent, the Court did not find that the dispute concerned the difference over the name of the Applicant referred to in Article 5, paragraph 1, of the Interim Accord and that, consequently, it was excluded from the Court's jurisdiction by virtue of the exception provided in Article 21, paragraph 2. With regard to the second objection, the Court considered that the conduct forming the object of the Application was the Respondent's alleged objection to the Applicant's admission to NATO, and that, on the merits, the Court would only have to determine whether or not that conduct demonstrated that the Respondent had failed to comply with its obligations under the Interim Accord, irrespective of NATO's final decision on the Applicant's membership application. In respect of the third objection, the Court observed that the Applicant was not requesting it to reverse NATO's decision in the Bucharest Summit, but to determine whether the Respondent had violated its obligations under the Interim Accord as a result of its conduct. It concluded therefore that a Judgment of the Court would be capable of being applied effectively, because it would affect the Parties' existing rights and obligations under the Interim Accord, contrary to what had been alleged by the Respondent. As regards the fourth and last objection raised by the Respondent, the Court did not uphold the argument that the exercise of jurisdiction by the Court would interfere with ongoing diplomatic negotiations mandated by the Security Council concerning the difference over the name and thus would be incompatible with the Court's judicial function. The Court noted that the Parties had included a provision conferring jurisdiction on the Court (Art. 21) in an agreement that also required them to continue negotiations on the dispute between them over the name of the Applicant (Art. 5, para. 1). It took the view that, had the Parties considered that a future ruling by the Court would interfere with diplomatic negotiations mandated by the Security

Council, they would not have agreed to refer to it disputes concerning the interpretation or implementation of the Interim Accord.

Turning to the merits of the case, the Court considered whether the Respondent objected to the Applicant's admission to NATO, within the meaning of the first clause of Article 11, paragraph 1, of the Interim Accord. The Court considered that there was no indication that the Parties had intended to exclude from Article 11, paragraph 1, organizations like NATO which follow procedures which do not require a vote. The Court noted that the question before it was not whether the decision taken by NATO at the Bucharest Summit with respect to the Applicant's candidacy had been due exclusively, principally, or marginally to the Respondent's objection, but whether the Respondent, by its own conduct, had not complied with the obligation not to object contained in Article 11, paragraph 1, of the Interim Accord. In the view of the Court, the evidence submitted to it demonstrated that through formal diplomatic correspondence and through statements of its senior officials, the Respondent had made clear before, during and after the Bucharest Summit that the resolution of the difference over the name was the "decisive criterion" for the Respondent to accept the Applicant's admission to NATO. The Court therefore concluded that the Respondent had objected to the Applicant's admission to NATO, within the meaning of the first clause of Article 11, paragraph 1, of the Interim Accord.

The Court then turned to the question whether the Respondent's objection to the Applicant's admission to NATO at the Bucharest Summit fell within the exception contained in the second clause of Article 11, paragraph 1, of the Interim Accord. The Court noted that the Parties agreed that the Applicant intended to refer to itself within NATO, once admitted, by its constitutional name, not by the provisional designation set forth in resolution 817. It considered, however, that the Respondent did not have the right to object to the Applicant's admission to an organization based on the prospect that the Applicant would refer to itself in such organization with its constitutional name. It found, in effect, that the Applicant's intention to refer to itself in an international organization by its constitutional name did not mean that it was "to be referred to" in such organization "differently than in" paragraph 2 of resolution 817.

The Court thus concluded that the Respondent had failed to comply with its obligation under Article 11, paragraph 1, of the Interim Accord by objecting to the Applicant's admission to NATO at the Bucharest Summit.

The Court observed that, as an alternative to its main argument that it had complied with its obligations under the Interim Accord, the Respondent contended that the wrongfulness of any objection to the admission of the Applicant to NATO was precluded by the doctrine of *exception non adimpleti contractus*. The Court observed that, while the Respondent had presented separate arguments relating to the *exceptio*, partial suspension under Article 60 of the 1969 Vienna Convention and countermeasures, it had advanced certain minimum conditions that were common to all three arguments, namely that the Applicant had breached several provisions of the Interim Accord and that the Respondent's objection to the Applicant's admission to NATO had been made in response to those breaches.

In light of the analysis of the Respondent's allegations that the Applicant had breached several of its obligations under the Interim Accord, the Court concluded that the Respondent had established only one such breach. Namely, the Respondent had demonstrated that the Applicant had used the symbol prohibited by Article 7, paragraph 2, of the Interim Accord in 2004. After the Respondent raised the matter with the Applicant in 2004, the use of the symbol had been discontinued during that same year. The Court found no breach by the Applicant of the second clause of Article 11, paragraph 1, considering that this provision does not impose an obligation upon the Applicant not to be referred to in an international organization or institution by any reference other than the provisional designation (as "the former Yugoslav Republic of Macedonia"). The Court also concluded that the Respondent had not met its burden of demonstrating that the Applicant had breached its obligation, pursuant to Article 5, paragraph 1, of the Interim Accord, to negotiate in good faith with a view to reaching agreement on the differences over the name of the Applicant.

The Court then returned to the Respondent's contention that the *exceptio* precluded the Court from finding that the Respondent had breached its obligation under Article 11, paragraph 1, of the Interim Accord. The Court recalled that in all but one instance (the use of the symbol prohibited by Article 7, paragraph 2), the Respondent had failed to establish any breach of the Interim Accord by the Applicant. In addition, the Respondent had failed to show a connection between the Applicant's use of the symbol in 2004 and the Respondent's objection in 2008 — that is, evidence that when the Respondent raised its objection to the Applicant's admission to NATO, it had done so in response to the apparent violation of Article 7, paragraph 2, or, more broadly, on the basis of any belief that the *exceptio* precluded the wrongfulness of its objection. The Court concluded that the Respondent had thus failed to establish that the conditions which it had itself asserted would be necessary for the application of the *exceptio* had been satisfied in the case. It was, therefore, unnecessary for the Court to determine whether that doctrine forms part of contemporary international law.

With respect to the suggestion by the Respondent that its objection to the Applicant's admission to NATO could have been regarded as a legitimate response to material breaches of the Interim Accord allegedly committed by the Applicant, the Court considered that the only breach which had been established could not be regarded as a material breach within the meaning of Article 60 of the 1969 Vienna Convention. Moreover, the Respondent had failed to establish that the action which it had taken in 2008 in connection with the Applicant's application to NATO had been a response to the breach of Article 7, paragraph 2, approximately four years earlier. Finally, the Court did not accept that the objection to the Applicant's admission to NATO could be justified as a proportionate countermeasure in response to breaches of the Interim Accord by the Applicant. The Court therefore concluded that the additional justification submitted by the Respondent as an alternative to its main argument that it had complied with its obligations under the Interim Accord failed.

As to possible remedies for the violation by the Respondent of its obligation under Article 11, paragraph 1, of the Interim Accord, the Court found that a declaration that the Respondent had violated its obligation not to object to the Applicant's admission to or membership in NATO was warranted and that such finding constituted appropriate satisfaction. The Court did not consider it necessary, however, to order the Respondent, as the Applicant requested, to refrain from any future conduct that violated its obligation under Article 11, paragraph 1, of the Interim Accord. As the Court had previously explained, "[a]s a general rule, there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed" (*Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2009*, p. 267, para. 150).

JURISDICTIONAL IMMUNITIES OF THE STATE
(GERMANY v. ITALY: GREECE INTERVENING)

On 23 December 2008, the Federal Republic of Germany instituted proceedings against the Italian Republic, requesting the Court to declare that Italy had failed to respect the jurisdictional immunity which Germany enjoys under international law by allowing civil claims to be brought against it in the Italian courts seeking reparation for injuries caused by violations of international humanitarian law committed by the Third Reich during the Second World War. In addition, Germany asked the Court to find that Italy had also violated Germany's immunity by taking measures of constraint against Villa Vigoni, German State property situated in Italian territory. Finally, Germany requested the Court to declare that Italy had breached Germany's jurisdictional immunity by declaring enforceable in Italy decisions of Greek civil courts rendered against Germany on the basis of acts similar to those which had given rise to the claims brought before Italian courts. Germany referred in particular to the judgment rendered against it in respect of the massacre committed by German armed forces during their withdrawal in 1944 in the Greek village of in the *Distomo* case.

As basis for the Court's jurisdiction, Germany invoked Article 1 of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957, ratified by Italy on 29 January 1960 and by Germany on 18 April 1961.

The Memorial of Germany and the Counter-Memorial of Italy were filed within the time-limits fixed by the Order of the Court of 29 April 2009. In its Counter-Memorial, Italy, referring to Article 80 of the Rules of Court, made a counter-claim "with respect to the question of the reparation owed to Italian victims of grave violations of international humanitarian law committed by forces of the German Reich". Italy based the Court's jurisdiction to entertain that counter-claim on Article 1 of the European Convention, taken together with Article 36, paragraph 1, of the Statute of the Court. Italy further asserted that there was "a direct connection between the facts and law upon which [it] relies in rebutting Germany's claim and the facts and law upon which [it] relies to support its counter-claim". The Court found that the counter-claim presented by Italy was inadmissible because the dispute that Italy intended to bring before the Court by way of its counter-claim related to facts and situations existing prior to the entry into force as between the parties of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957, which formed the basis of the Court's jurisdiction in the case (Order of 6 July 2010).

After the filing of the aforementioned Memorial and Counter-Memorial, the Court authorized the submission of a Reply by Germany and a Rejoinder by Italy.

On 13 January 2011, Greece filed an Application requesting permission to intervene in the case. In its Application, Greece stated that it wished to intervene in the aspect of the procedure relating to judgments rendered by its own courts on the *Distomo* massacre and enforced (*exequatur*) by the Italian courts. The Court, in an Order of 4 July 2011, considered that it might find it necessary to consider the decisions of Greek courts in the *Distomo* case, in light of the principle of State immunity, for the purposes of making findings with regard to Germany's submission that Italy had breached its jurisdictional immunity by declaring enforceable in Italy decisions of Greek courts founded on violations of international humanitarian law committed by the German Reich during the Second World War. This permitted the conclusion that Greece had an interest of a legal nature which might have been affected by the judgment in the case and, consequently, that Greece could be permitted to intervene as a non-party "in so far as this intervention is limited to the decisions of Greek courts [in the *Distomo* case]".

In its Judgment rendered on 3 February 2012, the Court first examined the question whether Italy had violated Germany's jurisdictional immunity by allowing civil claims to be brought against that State in the Italian courts. The Court noted in this respect that the question which it was called upon to decide was not whether the acts committed by the Third Reich during the Second World War were illegal, but whether, in civil proceedings against Germany relating to those acts, the Italian courts were obliged to accord Germany immunity. The Court held that the action of the Italian courts in denying Germany immunity constituted a breach of Italy's international obligations. It stated in this connection that, under customary international law as it presently stood, a State was not deprived of immunity by reason of the fact that it was accused of serious violations of international human rights law or the international law of armed conflict. The Court further observed that, assuming that the rules of the law of armed conflict which prohibited murder, deportation and slave labour were rules of *jus cogens*, there was no conflict between those rules and the rules on State immunity. The two sets of rules addressed different matters. The rules of State immunity were confined to determining whether or not the courts of one State could exercise jurisdiction in respect of another State. They did not bear upon the question whether or not the conduct in respect of which the proceedings were brought was lawful or unlawful. Finally, the Court examined Italy's argument that the Italian courts were justified in denying Germany immunity because all other attempts to secure compensation for the various groups of victims involved in the Italian proceedings had failed. The Court found no basis in the relevant domestic or international practice that international law made the entitlement of a State to immunity dependent upon the existence of effective alternative means of securing redress.

The Court then addressed the question whether a measure of constraint taken against property belonging to Germany located on Italian territory constituted a breach by Italy of Germany's immunity. Italy had registered a legal charge on the property in question following a decision by the Italian courts declaring that the judgments of the Greek courts were enforceable in Italy and awarding pecuniary damages against Germany. The Court noted that Villa Vigoni was being used for governmental purposes that were entirely non-commercial, that Germany had in no way consented to the registration of the legal charge in question, nor allocated Villa Vigoni for the satisfaction of the judicial claims against it. Since the conditions permitting a measure of constraint to be taken against property belonging to a foreign State had not been met in this case, the Court concluded that Italy had violated its obligation to respect Germany's immunity from enforcement.

Finally, the Court examined the question whether Italy had violated Germany's immunity by declaring enforceable in Italy civil judgments rendered by Greek courts against Germany in proceedings arising out of the massacre committed in the Greek village of *Distomo* by the armed forces of the Third Reich in 1944. It considered that the relevant question was whether the Italian courts had respected Germany's immunity in allowing the application for *exequatur*, and not whether the Greek court having rendered the judgment of which *exequatur* was sought had respected Germany's jurisdictional immunity. It observed that a court seised of an application for *exequatur* of a foreign judgment rendered against a third State had to ask itself whether, in the event that it had itself been seised of the merits of a dispute identical to that which was the subject of the foreign judgment, it would have been obliged under international law to accord immunity to the respondent State. It found that the decisions of the Italian courts declaring enforceable in Italy the civil judgments rendered against Germany by Greek courts in proceedings arising out of the massacre committed in Greece in 1944 constituted a violation by Italy of its obligation to respect the jurisdictional immunity of Germany.

Accordingly, the Court declared that Italy must, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the decisions of its courts and those of other judicial authorities infringing the immunity which Germany enjoyed under international law cease to have effect.

It should be noted that, on 14 January 2013, the Italian Parliament adopted a draft law concerning the accession of Italy to the United Nations Convention on Jurisdictional Immunities of States and Their Property, and provisions adapting national law. This law was published in the *Official Journal of the Italian Republic* on 29 January 2013. Article 3 thereof, entitled "Compliance with the judgments of the International Court of Justice" states that the International Court of Justice having excluded the possibility of certain acts of another State being submitted to the Italian civil jurisdiction, the court hearing the dispute relating to those acts shall find on its own motion that it lacks jurisdiction, even when a preliminary judgment establishing its jurisdiction has already become *res judicata*, and whatever the state or phase of the proceedings. It adds that any ruling having the effect of *res judicata* which is not consonant with a judgment of the International Court of Justice, even where that judgment is rendered subsequently, may also be subject to revision for lack of civil jurisdiction.

[illegible]

On 19 February 2009, Belgium filed an Application instituting proceedings against Senegal relating to Mr. Hissène Habré, the former President of Chad and resident in Senegal since being granted political asylum by the Senegalese Government in 1990. Belgium submitted that, by failing to prosecute Mr. Habré for certain acts he was alleged to have committed during his presidency, including acts of torture and crimes against humanity, or to extradite him to Belgium, Senegal had violated the so-called obligation *aut dedere aut judicare* (that is to say, "to prosecute or extradite") provided for in Article 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in customary international law.

On the same day, Belgium filed a request for the indication of provisional measures, asking the Court to order "Senegal to take all the steps within its power to keep Mr. H. Habré under the control and surveillance of the judicial authorities of Senegal so that the rules of international law with which Belgium requests compliance may be correctly applied". Belgium justified this request by reference to certain statements made by Mr. Abdoulaye Wade, President of the Republic of Senegal, which, according to Belgium, indicated that, if Senegal could not secure the necessary funding to try Mr. Habré, it would "cease monitoring him or transfer him to another State".

In its Order of 28 May 2009, referring to the assurances given by Senegal during the oral proceedings that it would not allow Mr. Habré to leave its territory while the case was pending, the Court concluded that there was no risk of irreparable prejudice to the rights claimed by Belgium and that there did not exist any urgency to justify the indication of provisional measures.

In its Judgment dated 20 July 2012, the Court began by examining the questions raised by Senegal relating to its jurisdiction and to the admissibility of Belgium's claims. Having pointed out that the existence of a dispute is a condition of its jurisdiction under both bases of jurisdiction invoked by Belgium — Article 30, paragraph 1, of the Convention against Torture and the declarations made by both States under Article 36, paragraph 2, of the Statute — the Court considered that, since any dispute that may have existed between the Parties with regard to the interpretation or application of Article 5, paragraph 2, of the Convention against Torture had ended by the time the Application was filed, it lacked jurisdiction to decide on Belgium's claim relating to that provision. Article 5, paragraph 2, of the said Convention obliges the States parties thereto to establish the universal jurisdiction of their courts over the crime of torture. The Court found, however, that it did have jurisdiction to entertain Belgium's claims based on the interpretation and application of Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention. It further considered, on the basis of the international arrest warrant issued against Mr. Habré by Belgium, the extradition request transmitted to Senegal and the diplomatic exchanges between the two Parties, that, at the time of the filing of the Application instituting proceedings, there was no dispute between the Parties regarding Senegal's obligation to prosecute or extradite Mr. Habré for crimes he was alleged to have committed under customary international law. The Court observed that, consequently, while the facts which constituted those alleged crimes may have been closely connected to the alleged acts of torture, it did not have jurisdiction to entertain the issue whether there existed an obligation for a State to prosecute crimes under customary international law allegedly committed by a foreign national abroad.

The Court then turned to the conditions which have to be met in order for it to have jurisdiction under Article 30, paragraph 1, of the Convention against Torture, namely that the dispute cannot be settled through negotiation and that, after a request for arbitration has been made by one of the parties, they have been unable to agree on the organization of the arbitration within six months from that request. Having found that these conditions had been met, the Court concluded that it had jurisdiction to entertain the dispute between the Parties concerning the interpretation and application of Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention. It ruled, however, that it was not necessary for it to establish whether its jurisdiction also existed with regard to the same dispute on the basis of the declarations made by the Parties under Article 36, paragraph 2, of its Statute.

With respect to the admissibility of Belgium's claims, the Court ruled that once any State party to the Convention against Torture was able invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes*, i.e., obligations owed toward all States parties, Belgium, as a party to the said Convention, had standing to invoke the responsibility of Senegal for the alleged breaches of its obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of that Convention. The Court thus found that Belgium's claims based on those provisions were admissible.

As regards the alleged violation of Article 6, paragraph 2, of the Convention against Torture, which provides that a State party in whose territory a person alleged to have committed acts of torture is present must "immediately make a preliminary inquiry into the facts", the Court noted that Senegal had not included in the case file any material demonstrating that it had carried out such an inquiry. The Court further observed that, while the choice of means for conducting the inquiry remained in the hands of the States parties, taking account of the case in question, Article 6, paragraph 2, of the Convention requires that steps must be taken as soon as the suspect is identified in the territory of the State, in order to conduct an investigation of that case. In the present case, the establishment of the facts had become imperative at least since the year 2000, when a complaint was filed in Senegal against Mr. Habré. Nor had an investigation been initiated in 2008, when a further complaint against Mr. Habré was filed in Dakar, after the legislative and constitutional amendments made in 2007 and 2008, respectively. The Court concluded from the foregoing that Senegal had breached its obligation under the above-mentioned provision.

With respect to the alleged violation of Article 7, paragraph 1, of the Convention against Torture, the Court first examined the nature and meaning of the obligation laid down in that provision. It observed that the obligation to submit the case to the competent authorities for the purpose of prosecution (the "obligation to prosecute") deriving from that provision was formulated in such a way as to leave it to the said authorities to decide whether or not to initiate proceedings, thus respecting the independence of States parties' judicial systems; those authorities thus remain responsible for deciding on whether to initiate a prosecution, in the light of the evidence before them and of the relevant rules of criminal procedure. The Court further observed that the obligation to prosecute requires the State concerned to submit the case to its competent authorities for the purpose of prosecution, irrespective of the existence of a prior request for the extradition of the suspect. It noted, however, that, if the State in whose territory the suspect is present has received a request for extradition in any of the cases envisaged in the provisions of the Convention, it may relieve itself of its obligation to prosecute by acceding to that request. It thus concluded that extradition was an option offered to the State by the Convention, whereas prosecution was an international obligation under the Convention, the violation of which was a wrongful act engaging the responsibility of the State.

The Court then turned to the temporal scope of the obligation laid down in Article 7, paragraph 1, of the Convention. It noted in this respect that, while the prohibition of torture was part of customary international law and had become a peremptory norm (*jus cogens*), the obligation to prosecute the alleged perpetrators of acts of torture under the Convention applied only to facts having occurred after its entry into force for the State concerned. The Court concluded from the foregoing that Senegal's obligation to prosecute pursuant to Article 7, paragraph 1, of the Convention did not apply to acts alleged to have been committed before the Convention entered into force for Senegal on 26 June 1987, although there was nothing in that instrument to prevent it from instituting proceedings concerning acts that were committed before that date. The Court found that Belgium, for its part, was entitled, with effect from 25 July 1999, the date when it became party to the Convention, to request the Court to rule on Senegal's compliance with its obligation under Article 7, paragraph 1, of the Convention.

Finally, the Court examined the question of the implementation of the obligation to prosecute. It concluded that the obligation laid down in Article 7, paragraph 1, required Senegal to take all measures necessary for its implementation as soon as possible, in particular once the first complaint had been filed against Mr. Habre in 2000. Having failed to do so, Senegal had breached and remained in breach of its obligations under Article 7, paragraph 1, of the Convention.

The Court found that, by failing to comply with its obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention, Senegal had engaged its international responsibility. Therefore, it was required to cease that continuing wrongful act and to take, without further delay, the necessary measures to submit the case to its competent authorities for the purpose of prosecution, if it did not extradite Mr. Habre.

([illegible]) JURISDICTION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (BELGIUM V. SWITZERLAND)

On 21 December 2009, the Kingdom of Belgium initiated proceedings against the Swiss Confederation in respect of a dispute concerning primarily the interpretation and application of the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters. In particular, the case related to a dispute between the main shareholders in Sabena, the former Belgian airline. Belgium argued that Switzerland was breaching the Lugano Convention and other international obligations by virtue of the decision of its courts to refuse to recognize a decision in a Belgian court on the liability of the Swiss shareholders to the Belgian shareholders (including the Belgian State and three companies owned by the Belgian State).

In its Order of 4 February 2010, the Court fixed time-limits for the filing of the Memorial of Belgium and the Counter-Memorial of Switzerland. In its Order of 10 August 2010, the Court subsequently extended the time-limits to 23 November 2010 for the filing of the Memorial of Belgium and 24 October 2011 for the filing of the Counter-Memorial of Switzerland. The Memorial of Belgium was filed within the time-limit thus extended. On 18 February 2011, Switzerland raised preliminary objections in respect of the jurisdiction of the Court and the admissibility of the Application.

By a letter dated 21 March 2011, the Agent of Belgium informed the Court that his Government "in concert with the Commission of the European Union, considers that it can discontinue the proceedings instituted [by Belgium] against Switzerland" and requested the Court "to make an order recording Belgium's discontinuance of the proceedings and directing that the case be removed" from the Court's General List.

In his letter, the Agent cited as the reason for the Belgian Government's request to discontinue the proceedings the preliminary objections raised in the case by Switzerland. In the letter, the Belgian Government explained in particular that it had taken note of the fact that

> "Switzerland states . . . that the reference by the [Swiss] Federal Supreme Court in its 30 September 2008 judgment to the 'non-recognizability' of a future Belgian judgment does not have the force of *res judicata* and does not bind either the lower cantonal courts or the Federal Supreme Court itself, and that there is therefore nothing to prevent a Belgian judgment, once handed down, from being recognized in Switzerland in accordance with the applicable treaty provision".

Since Switzerland did not oppose the said discontinuance, the Court, placing on record the discontinuance by Belgium of the proceedings, ordered that the case be removed from its List (Order of 5 April 2011).

CERTAIN QUESTIONS CONCERNING DIPLOMATIC RELATIONS
(HONDURAS v. BRAZIL)

On 28 October 2009, the Ambassador of Honduras to the Netherlands filed in the Registry of the Court an Application instituting proceedings against Brazil in respect of a

> "dispute between [the two States] relat[ing] to legal questions concerning diplomatic relations and associated with the principle of non-intervention in matters which are essentially within the domestic jurisdiction of any State, a principle incorporated in the Charter of the United Nations".

It was alleged therein that Brazil had "breached its obligations under Article 2 (7) of the Charter and those under the 1961 Vienna Convention on Diplomatic Relations".

At the end of the Application the Court was requested

> "to adjudge and declare that Brazil does not have the right to allow the premises of its Mission in Tegucigalpa to be used to promote manifestly illegal activities by Honduran citizens who have been staying within it for some time now and that it shall cease to do so".

To found the Court's jurisdiction, Honduras invoked Article XXXI of the American Treaty on Pacific Settlement, signed on 30 April 1948 and, under the terms of

Article LX thereof, officially called the "Pact of Bogotá", ratified without reservation by Honduras on 13 January 1950 and by Brazil on 9 November 1965.

An original copy of the Application was sent to the Government of Brazil on 28 October 2009. The Secretary-General of the United Nations was also informed about the filing of that Application.

By a letter dated 28 October 2009, received in the Registry on 30 October 2009 under the cover of a letter dated 29 October 2009 from Mr. Jorge Arturo Reina, Permanent Representative of Honduras to the United Nations, Ms Patricia Isabel Rodas Baca, Minister for External Relations in the Government headed by Mr. Jose Manuel Zelaya Rosales, informed the Court, inter alia, that the Ambassador of Honduras to the Netherlands was not the legitimate representative of Honduras before the Court and that "Ambassador Eduardo Enrique Reina is being appointed as the sole legitimate representative of the Government of Honduras to the International Court of Justice". A copy of the communication, with annexes, from the Permanent Representative of Honduras to the United Nations was sent on 3 November 2009 to Brazil, as well as to the Secretary-General of the United Nations. The Court decided that, given the circumstances, no other action would be taken in the case until further notice.

By a letter dated 30 April 2010, received in the Registry on 3 May 2010, Mr. Mario Miguel Canahuati, Minister for External Relations of Honduras, informed the Court that the Honduran Government was "not going on with the proceedings initiated by the application" and that it "accordingly withdraws this application from the Registry". Consequently, the President of the Court made an Order on 12 May 2010 in which, after noting that Brazil had not taken any step in the proceedings in the case, he recorded the discontinuance by Honduras of the proceedings and ordered that the case be removed from the List.

Whaling in the Antarctic
(Australia v. Japan: New Zealand intervening)

On 31 May 2010, Australia instituted proceedings against Japan in respect of "Japan's continued pursuit of a large-scale program of whaling under the Second Phase of its Japanese Whale Research Program under Special Permit in the Antarctic ('JARPA II'), in breach of obligations assumed by Japan under the International Convention for the Regulation of Whaling ('ICRW'), as well as its other international obligations for the preservation of marine mammals and the marine environment".

Australia contended that whales taken as part of the JARPA II Program ended up on the commercial market and that the scale of whaling carried out under the program was in fact larger than it had been before the moratorium on commercial whaling under the ICRW. In its Application, it requested the Court to order that Japan:

> "(a) cease implementation of JARPA II; (b) revoke any authorisations, permits or licences allowing the activities which are the subject of [the said] application to be undertaken; and (c) provide assurances and guarantees that it will not take any further action under the JARPA II or any similar program until such program has been brought into conformity with its obligations under international law".

As basis for the jurisdiction of the Court, Australia invoked the provisions of Article 36, paragraph 2, of the Court's Statute, referring to the declarations recognizing the Court's jurisdiction as compulsory made by Australia and Japan on 22 March 2002 and 9 July 2007, respectively.

By an Order of 13 July 2010, the Court fixed 9 May 2011 as the time-limit for the filing of a Memorial by Australia and 9 March 2012 as the time-limit for the filing of a Counter-Memorial by Japan. Those pleadings were filed within the time-limits thus prescribed. The Court subsequently decided that the filing of a Reply by Australia and a Rejoinder by Japan was not necessary and that the written phase of the proceedings was therefore closed.

On 20 November 2012, New Zealand filed in the Registry a declaration of intervention in the case. Relying on Article 63, paragraph 2, of the Statute, it contended that, as a party to the ICRW, it had a direct interest in the construction that might be placed upon the Convention by the Court in its decision in the proceedings. In its declaration, New Zealand explained that its intervention was directed in particular to the question of the construction of Article VIII of the Convention, which provided, *inter alia*, that

> "any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take and treat whales for purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the Contracting Government thinks fit".

Finally, New Zealand underlined that, in intervening, it did not seek to become a party to the proceedings and that, in accordance with Article 63 of the Statute, it accepted that the construction given by the judgment in the case would be equally binding upon it.

In an Order of 13 February 2013, having noted that New Zealand met the requirements set out in the Statute and the Rules of Court, the Court found that the declaration of intervention was admissible and fixed 4 April 2013 as the time-limit for the filing by New Zealand of written observations on the subject matter of its intervention. By the same Order, the Court authorized the filing by Australia and Japan, by 31 May 2013 at the latest, of written observations on the written observations of New Zealand. After the filing of those written observations within the time-limits prescribed, the Court held public hearings from 26 June to 16 July 2013, during which oral arguments were presented by Australia and Japan and the experts that each Party had asked to be called were heard by the Court.

New Zealand presented oral observations on the subject-matter of its intervention. The Court began its deliberation following the conclusion of those hearings.

[illegible] *Frontier Dispute (Burkina Faso/Niger)*

On 20 July 2010, Burkina Faso and Niger jointly submitted a frontier dispute between them to the Court, pursuant to a Special Agreement signed in Niamey on 24 February 2009 and which entered into force on 20 November 2009. In Article 2 of the Special Agreement, the Court was requested to determine the course of the boundary between the two countries in the sector from the astronomic marker of Tong-Tong to the beginning of the Botou bend and to place on record the Parties' agreement ("*leur entente*") on the results of the work of the Joint Technical Commission on Demarcation of the boundary.

In its Judgment of 16 April 2013, the Court indicated that, when it is seised on the basis of a Special Agreement, any request made by a party in its final submissions can fall within the jurisdiction of the Court only if it remains within the limits defined by the provisions of that Special Agreement. However, in the opinion of the Court, the request made by Burkina Faso in points 1 and 3 of its final submissions did not exactly correspond to the terms of the Special Agreement, since that State did not request the Court to "place on record the Parties' agreement" ("*leur entente*") regarding the delimitation of the frontier in the two demarcated sectors, but rather to delimit itself the frontier according to a line that corresponds to the conclusions of the Joint Technical Commission. Although the Court has the power to interpret the final submissions of the Parties in such a way as to maintain them within the limits of its jurisdiction under the Special Agreement, that is not, however, sufficient to entertain such a request: the object of that request must also fall within the Court's judicial function, which is to decide, in accordance with international law, such disputes as are submitted to it. However, in the case in question, neither of the Parties had ever claimed that a dispute continued to exist between them concerning the delimitation of the frontier in the two sectors in question on the date when the proceedings were instituted — nor that such a dispute had subsequently arisen. Accordingly, the Court considered that Burkina Faso's request exceeded the limits of its judicial function.

The Court then turned to the dispute actually submitted to it. It observed that Article 6 of the Special Agreement, entitled "Applicable Law", highlighted, amongst the rules of international law applicable to the dispute, "the principle of the intangibility of boundaries inherited from colonization and the Agreement of 28 March 1987". It noted that the first two Articles of that Agreement specify the acts and documents of the French colonial administration which must be used to determine the delimitation line that existed when the two countries gained independence. It observed in that connection that it follows from the 1987 Agreement that the *Arrêté* of 31 August 1927 adopted by the Governor-General *ad interim* of French West Africa with a view to "fixing the boundaries of the colonies of Upper

Volta and Niger", as clarified by its Erratum of 5 October 1927, is the instrument to be applied for the delimitation of the boundary. It further observed that the 1987 Agreement provides for the possibility of "the *Arrêté* and Erratum not suffic[ing]" and establishes that, in that event, "the course shall be that shown on the 1:200,000-scale map of the Institut géographique national de France, 1960 edition".

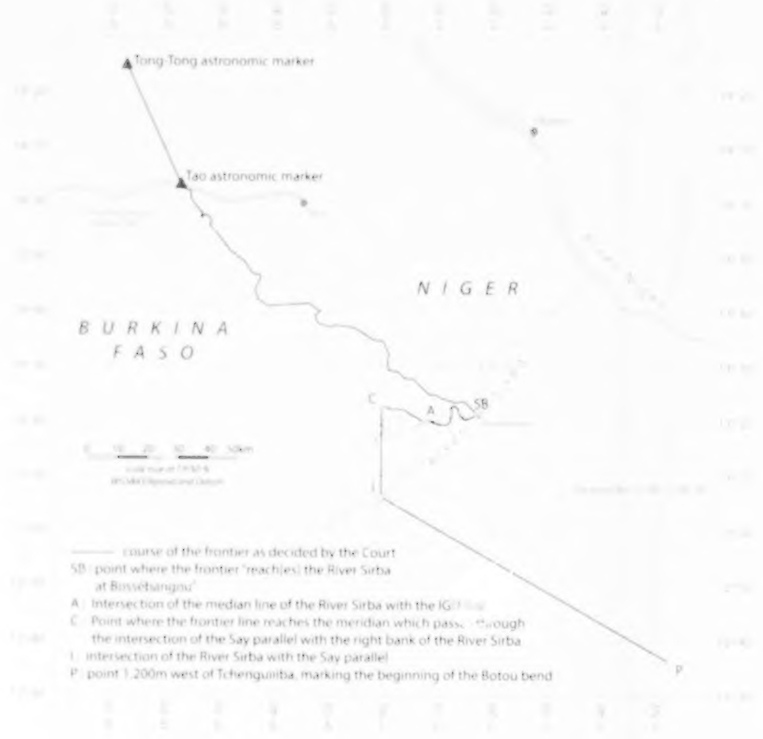
The Court was of the opinion that a straight line connecting the Tong-Tong and Tao astronomic markers should be regarded as constituting the frontier between Burkina Faso and Niger in the sector in question, since the colonial administration officials interpreted the *Arrêté* in that manner.

The Court further noted that it is not possible to determine from the *Arrêté* how to connect the Tao astronomic marker to "the River Sirba at Bossébangou". Recourse must therefore be had to the line appearing on the 1960 map of the Institut géographique national de France (IGN). Moreover, the Court declared that it could not uphold Niger's requests that the said line be shifted slightly at the level of the localities of Petelkolé and Oussaltane, on the ground that these were purportedly administered by Niger during the colonial period. According to the Court, once it had been concluded that the *Arrêté* was insufficient, and in so far as it was insufficient, the *effectivités* could no longer play a role in the case.

The Court further considered that, according to the description in the *Arrêté*, the frontier line, after reaching the median line of the River Sirba while heading towards Bossébangou, at the point called SB on the sketch-map attached to the Judgment, follows that line upstream until its intersection with the IGN line, at the point called point A on the sketch-map attached to the Judgment. From that point, since the *Arrêté* does not suffice to determine precisely the course of the frontier line, that line follows the IGN line, turning up towards the north-west until the point, called point B on the sketch-map attached to the Judgment, where the IGN line markedly changes direction, turning due south in a straight line. As this turning point B is situated some 200 m to the east of the meridian which passes through the intersection of the Say parallel with the River Sirba, the IGN line does not cut the River Sirba at the Say parallel. However — the Court noted — the *Arrêté* expressly requires that the boundary line cut the River Sirba at that parallel. The frontier line must therefore depart from the IGN line as from point B and, instead of turning there, continue due west in a straight line until the point, called point C on the sketch-map attached to the Judgment, where it reaches the meridian which passes through the intersection of the Say parallel with the right bank of the River Sirba. According to the description in the Erratum, the frontier line then runs southwards along that meridian until the said intersection, at the point called point I on the sketch-map attached to the Judgment.

The Court finally observed that, according to the *Arrêté*, "[f]rom that point the frontier, following an east-south-east direction, continues in a straight line up to

Sketch Map 4:
COURSE OF THE FRONTIER AS DECIDED BY THE COURT
This sketch map has been prepared for illustrative purposes only


Tong-Tong astronomic marker
Tao astronomic marker
NIGER
BURKINA FASO
C
A
SB
I
P
0 10 20 30 40 50km
——— course of the frontier as decided by the Court
SB : point where the frontier "reach[es] the River Sirba at Bossébangou"
A : Intersection of the median line of the River Sirba with the IGN line
C : Point where the frontier line reaches the meridian which passes through the intersection of the Say parallel with the right bank of the River Sirba
I : intersection of the River Sirba with the Say parallel
P : point 1,200m west of Tchenguiliba, marking the beginning of the Botou bend

a point located 1,200 m to the west of the village of Tchenguiliba". It considers that the *Arrêté* is precise in this section of the frontier, in that it establishes that the frontier line is a straight-line segment between the intersection of the Say parallel with the Sirba and the point located 1,200 m to the west of the village of Tchenguiliba, which marks the start of the southern section of the already demarcated portion of the frontier.

The Court decided that, having regard to the circumstances of the case, it would nominate at a later date, by means of an Order, the experts requested by the Parties in Article 7, paragraph 4, of the Special Agreement to assist them in the demarcation of their frontier in the area in dispute. By an Order of 12 July 2013, the Court nominated the said three experts. The case was thus completed and was removed from the Court's List.

[illegible] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*

On 18 November 2010, the Republic of Costa Rica filed an Application instituting proceedings against the Republic of Nicaragua in respect of an alleged "incursion into, occupation of and use by Nicaragua's Army of Costa Rican territory as well as [alleged] breaches of Nicaragua's obligations towards Costa Rica", namely the principle of territorial integrity and the prohibition of the threat or use of force in accordance with Article 2, paragraph 4, of the Charter, and endorsed between the Parties in Articles 1, 19 and 29 of the Charter of the Organization of American States.

In its Application, Costa Rica contended that Nicaragua had, in two separate incidents, occupied the territory of Costa Rica in connection with the construction of a canal from the San Juan River to Laguna los Portillos (also known as "Harbor Head Lagoon"), and carried out certain related works of dredging on the San Juan River. According to Costa Rica, the dredging and the construction of that canal would seriously affect the flow of water to the Colorado River of Costa Rica, and would cause further damage to Costa Rican territory, including the wetlands and national wildlife protected areas located in the region. As basis for the Court's jurisdiction, the Applicant invoked Article 36, paragraph 1, of the Statute of the Court by virtue of the operation of Article XXXI of the American Treaty on Pacific Settlement of 30 April 1948 ("Pact of Bogotá"), as well as the declarations of acceptance made by Costa Rica on 20 February 1973 and by Nicaragua on 24 September 1929 (modified on 23 October 2001), pursuant to Article 36, paragraph 2, of the Statute of the Court.

On 18 November 2010, Costa Rica also filed a request for the indication of provisional measures aimed at protecting its "right to sovereignty, to territorial integrity and to non-interference with its rights over the San Juan River, its lands, its environmentally protected areas, as well as the integrity and flow of the

Colorado River". By its request, Costa Rica sought in particular to obtain the withdrawal of all Nicaraguan troops from the territory in dispute, the immediate cessation of the construction of the canal and the suspension of the dredging of the Colorado River. By an Order indicating provisional measures dated 8 March 2011, the Court asked the Parties to refrain from sending to, or maintaining in the disputed territory any personnel, whether civilian, police or security. However, it did authorize Costa Rica to dispatch to the disputed territory, under certain conditions, civilian personnel charged with the protection of the environment. Finally, it asked the Parties to refrain from aggravating or extending the dispute.

On 22 December 2011, Nicaragua instituted proceedings against Costa Rica for "violations of Nicaraguan sovereignty and major environmental damages to its territory". In its Application, Nicaragua contended that Costa Rica was carrying out major construction works along most of the border area between the two countries with grave environmental consequences. The case was entered in the General List of the Court under the title *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)* (hereinafter the "*Nicaragua v. Costa Rica* case").

On 6 August 2012, Nicaragua filed its Counter-Memorial in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* (hereinafter the "*Costa Rica v. Nicaragua* case"), in which it submitted four counter-claims.

In a letter dated 19 December 2012, submitted on the filing of Nicaragua's Memorial in the *Nicaragua v. Costa Rica* case, Nicaragua requested the Court to join the proceedings in the *Costa Rica v. Nicaragua* and the *Nicaragua v. Costa Rica* cases.

By two Orders dated 17 April 2013, the Court, taking account of the circumstances and in conformity with the principle of the sound administration of justice and with the need for judicial economy, decided to join the proceedings in the two cases.

By an Order dated 18 April 2013, the Court ruled that the subject-matter of the first counter-claim presented by Nicaragua in the *Costa Rica v. Nicaragua* case (a claim relating to the damage that might result from the construction of the aforementioned road by Costa Rica) was identical in substance to its principal claim in the *Nicaragua v. Costa Rica* case and that, as a result of the joinder of the proceedings, there was no need for it to adjudicate on the admissibility of that counter-claim as such. The Court found the second and third counter-claims inadmissible, since there was no direct connection between those claims, which related to the question of sovereignty over the Bay of San Juan del Norte and Nicaragua's right to navigation on the Colorado River, respectively, and the principal claims of Costa Rica. Finally, the Court found that there was no need for it to entertain the fourth counter-claim, relating to the implementation of the provisional measures already indicated by the Court, since the Parties were free to take up that question in the further course of the proceedings.

On 23 May 2013, Costa Rica presented the Court with a request for the urgent modification of its Order of 8 March 2011, so as to prevent the presence of any individuals in the disputed territory other than those authorized to go there. In its written observations on that request, filed on 11 June 2013, Nicaragua considered it unjustified, contending that the individuals referred to by Costa Rica were part of a private group of young Nicaraguans who were participating in environmental sustainability programmes and who were staying in the disputed territory in order to carry out activities related to the preservation of the environment. Nicaragua in turn asked the Court to take account of the change in the situation as a result of the construction by Costa Rica of a road along the San Juan River and of the joinder of the proceedings in the two cases, and to modify or adapt its Order accordingly, in particular so as to allow both Parties (and not only Costa Rica) to despatch civilian personnel charged with the protection of the environment to the disputed territory. In its Order of 16 July 2013, the Court found that the presence of the group of young Nicaraguans in the disputed territory did indeed constitute a change in the situation compared to that which existed at the time of the adoption of the Order of 8 March 2011. It then examined whether that change in the situation was such as to justify the modification of the said Order. It considered that the presence of those Nicaraguan nationals did not appear to be causing irreparable harm to Costa Rica's alleged rights, and that nor did the evidence included in the case file establish the existence of a proven risk of irreparable damage to the environment. Finally, it declared that it did not see, in the facts as they were reported to it, the evidence of urgency that would justify the indication of further provisional measures. Consequently, it considered that the change in the situation that had occurred did not justify a modification of its earlier Order. The Court also considered that the arguments put forward by Nicaragua did not allow it to rely upon a change in the situation to found its request for a modification of the Order. Furthermore, it reaffirmed the measures indicated in its Order of 8 March 2011, in particular the requirement that the Parties "shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve".

On 24 September 2013, Costa Rica filed a request for the indication of new provisional measures in the *Costa Rica v. Nicaragua* case. This request followed the construction by Nicaragua of two new channels (*caños*) in the northern part of the disputed territory, the larger of the two being that to the east ("the eastern *caño*"). After holding public hearings in October 2013, the Court handed down its decision on 22 November 2013. In its Order, the Court considered that there was sufficient evidence for it to conclude that, in view of the length, breadth and position of the trench next to the eastern *caño*, there was a real risk that the trench could reach the Caribbean Sea, either as a result of natural elements or by human actions, or by a combination of both. It took the view that an alteration of the course of the San Juan River could ensue, with serious consequences for the rights claimed by Costa Rica. The Court was therefore of the opinion that the situation in the disputed territory revealed the existence of a real risk of irreparable prejudice to the rights claimed by the Applicant in the case. Considering, moreover, that there was urgency, the Court decided not only to reaffirm the provisional measures indicated in its Order of 8 March 2011 (see above), but also to indicate new measures. The Court thus directed that Nicaragua must refrain from any dredging or other activities in the disputed territory, and, in particular, refrain from work of any kind on the two new *caños*, and must also fill the trench on the beach north of the eastern *caño*. The Court further directed that, except as needed for implementing this obligation, Nicaragua must cause the removal from the disputed territory of all personnel, whether civilian, police or security, and prevent any such personnel from entering the disputed territory; it must likewise cause the removal from and prevent the entrance into the disputed territory of any private persons under its jurisdiction or control. The Court further stated that, subject to certain conditions, Costa Rica might take appropriate measures related to the two new *caños*.

For its part, on 11 October 2013 Nicaragua filed a request for the indication of provisional measures in the *Nicaragua v. Costa Rica* case, stating that it was seeking to protect certain rights which were being prejudiced by the road construction works carried out by Costa Rica (see above), in particular the transboundary movement of sediments and other resultant debris. After holding hearings on that request at the beginning of November 2013, the Court decided, in an Order dated 13 December 2013, that the circumstances, as they now presented themselves to the Court, were not such as to require the exercise of its power to indicate provisional measures. In particular, the Court found that Nicaragua had not established that the construction works had led to a substantial increase in the sediment load in the river, and that it had not presented the Court with evidence as to any long-term effect on the river of aggradations of the river channel allegedly caused by additional sediment from the construction of the road. Nor had Nicaragua explained how the road works could endanger individual species in the river's wetlands, or identified with precision which species were likely to be affected. The Court accordingly found that Nicaragua had not shown that there was any real and imminent risk of irreparable prejudice to the rights invoked by it in the case, and concluded that it could not therefore uphold its request for the indication of provisional measures.

151. Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)

On 28 April 2011, the Kingdom of Cambodia submitted to the Court, by an Application filed in the Registry, a Request for interpretation of the Judgment rendered by the Court on 15 June 1962 in the case concerning the *Temple of Preah*

Vihear (Cambodia v. Thailand). In that Judgment, the Court had ruled that "the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia" and that "Thailand is under an obligation to withdraw any military . . . forces . . . stationed . . . at the Temple, or in its vicinity on Cambodian territory" (see No. 43 above). In 2008, on Cambodia's request, the Temple was included on the list of World Heritage sites by UNESCO. Following that inclusion, several armed incidents took place between the Parties in the frontier area close to the Temple. On the same day that it filed its Application, Cambodia, stressing the urgency and the risk of irreparable damage, also filed a Request for the indication of provisional measures. In its Order of 18 July 2011 on that Request, the Court ruled that it could exercise its power under Article 41 of the Statute and indicated provisional measures requiring, among other things, both Parties to withdraw their military personnel from a "provisional demilitarized zone" surrounding the Temple, as defined in the Order. In that Order, the Court observed in particular that "a difference of opinion or views appears to exist between [the Parties] as to the meaning or scope of the 1962 Judgment" and that "this difference appears to relate" to three specific aspects of the said Judgment: first, to the meaning and scope of the phrase "vicinity on Cambodian territory" used in the second paragraph of the operative clause of the Judgment; next, to the nature of the obligation imposed on Thailand in the second paragraph of the operative clause of the Judgment, to "withdraw any military or police forces, or other guards or keepers", and, in particular, to the question of whether this obligation is of a continuing or an instantaneous character; and, finally, to the question of whether the Judgment did or did not recognize with binding force the line shown on the Annex I map as representing the frontier between the two Parties.

On 21 November 2011, within the time-limit fixed for this purpose, Thailand filed written observations on the Request for interpretation submitted by Cambodia. The Court then decided to afford each of the Parties the opportunity of furnishing further written explanations, pursuant to Article 98, paragraph 4, of the Rules of Court. It fixed 8 March 2012 and 21 June 2012 as the respective time-limits for the filing of such explanations by Cambodia and by Thailand. Those pleadings were filed within the time-limits thus prescribed. In accordance with the same provision, the Court also decided to afford the Parties the opportunity of furnishing further oral explanations at hearings held in April 2013. Following the conclusion of those hearings, the Court began its deliberation.

In the Judgment delivered by it on 11 November 2013, the Court recalled that Cambodia's Request for interpretation was made by reference to Article 60 of the Statute, which provides that "[i]n the event of dispute as to the meaning or scope of [a] judgment, the Court shall construe it upon the request of any party". After examining whether the conditions indicated in Article 60 were satisfied, the Court concluded that there was a dispute between the Parties as to the meaning and scope of the 1962 Judgment. The Court then turned to the interpretation of the

1962 Judgment. In determining the meaning and scope of the operative clause of the original Judgment, the Court first pointed out that, in accordance with its practice, it would have regard to the reasoning of that Judgment to the extent that it sheds light on the proper interpretation of the operative clause. The Court noted that the principal dispute between the Parties concerned the territorial scope of the second operative paragraph, namely the territorial extent of the "vicinity" of the Temple of Preah Vihear.

The Court considered that, in view of the reasoning in the 1962 Judgment, seen in the light of the pleadings in the original proceedings, the second operative paragraph of the 1962 Judgment required Thailand to withdraw from the whole territory of the promontory any Thai personnel stationed on that promontory at the time. Accordingly, the Court found that the term "vicinity on Cambodian territory" had to be construed as extending at least to the area where a police detachment had been stationed at the time of the original proceedings. The Court observed that that finding was confirmed by a number of other factors, and in particular by the fact that the area around the Temple is located on an easily identifiable geographical feature, namely a promontory. In the east, south and south-west, the promontory descends by a steep escarpment to the Cambodian plain. The Parties were in agreement in 1962 that this escarpment, and the land at its foot, were under Cambodian sovereignty in any event. To the west and north-west, the land drops in a slope, less steep than the escarpment but nonetheless pronounced, into the valley which separates Preah Vihear from the neighbouring hill of Phnom Trap, a valley which itself drops away in the south to the Cambodian plain. The Court considered that Phnom Trap lay outside the disputed area and the 1962 Judgment did not address the question whether it was located in Thai or Cambodian territory. Accordingly, the Court considered that the promontory of Preah Vihear ends at the foot of the hill of Phnom Trap, that is to say, where the ground begins to rise from the valley.

In the Court's view, the reasoning followed in the 1962 Judgment showed that the Court considered that Cambodia's territory extended in the north as far as the line on the map annexed to Cambodia's pleadings in the original proceedings (the "Annex I map"), which the Parties had accepted. Accordingly, the Court found that, in the north, the limit of the promontory is the Annex I map line, from a point to the north-east of the Temple where that line abuts the escarpment to a point in the north-west where the ground begins to rise from the valley, at the foot of the hill of Phnom Trap.

The Court then examined the relationship between the second operative paragraph and the rest of the operative part. It considered that the territorial scope of the three operative paragraphs is the same: the finding in the first paragraph that "the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia" must be taken as referring, like the second and third paragraphs, to the promontory of Preah Vihear.

Lastly, the Court observed that the Temple of Preah Vihear is a site of religious and cultural significance for the peoples of the region and is now listed by UNESCO as a world heritage site. In this respect, the Court recalls that under Article 6 of the World Heritage Convention, to which both States are parties, Cambodia and Thailand must co-operate between themselves and with the international community in the protection of the site as a world heritage. In addition, each State is under an obligation not to "take any deliberate measures which might damage directly or indirectly" such heritage. In the context of these obligations, the Court emphasized the importance of ensuring access to the Temple from the Cambodian plain.

1.126. *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*

On 24 April 2013, the Plurinational State of Bolivia instituted proceedings against the Republic of Chile before the Court, concerning a dispute in relation to "Chile's obligation to negotiate in good faith and effectively with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean". In its Application, Bolivia asserted that "beyond its general obligations under international law, Chile has committed itself, more specifically through agreements, diplomatic practice and a series of declarations attributable to its highest-level representatives, to negotiate a sovereign access to the sea for Bolivia". According to Bolivia, "Chile has not complied with this obligation and . . . denies the existence of its obligation". Bolivia presented a summary of the facts — starting from the independence of Bolivia in 1825 — which, according to Bolivia, are the main relevant facts on which its claim was based. It requested the Court to adjudge that Chile had the obligation to negotiate with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean, that Chile had breached the said obligation and that it must perform the said obligation in good faith, promptly, formally, within a reasonable time and effectively. Finally, in its Application, as the basis for the jurisdiction of the Court, Bolivia invoked Article XXXI of the American Treaty on Pacific Settlement (Pact of Bogotá) of 30 April 1948, to which both States are parties.

By an Order of 18 June 2013, the Court fixed 17 April 2014 and 18 February 2015 as the respective time-limits for the filing of a Memorial by Bolivia and a Counter-Memorial by Chile.

1.127. *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*

On 16 September 2013, Nicaragua instituted proceedings against Colombia with regard to a "dispute [which] concerns the delimitation of the boundaries between, on the one hand, the continental shelf of Nicaragua beyond the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured, and on the other hand, the continental shelf of Colombia".

In its Application, Nicaragua requested the Court to determine "[t]he precise course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in its Judgment of 19 November 2012" in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*. The Applicant also requested the Court to indicate "[t]he principles and rules of international law that determine the rights and duties of the two States in relation to the area of overlapping continental shelf claims and the use of its resources, pending the delimitation of the maritime boundary between them beyond 200 nautical miles from Nicaragua's coast".

Nicaragua recalled that "[t]he single maritime boundary between the continental shelf and the exclusive economic zones of Nicaragua and of Colombia within the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured was defined by the Court in paragraph 251 of its Judgment of 19 November 2012" (see No. 1.100 above).

It further recalled that "[i]n that case [it] had sought a declaration from the Court describing the course of the boundary of its continental shelf throughout the area of the overlap between its continental shelf entitlement and that of Colombia", but that "the Court considered that Nicaragua had not then established that it has a continental margin that extends beyond 200 nautical miles from the baselines from which its territorial sea is measured, and that it was therefore not then in a position to delimit the continental shelf as requested by Nicaragua".

Nicaragua contended that its "final information" submitted to the Commission on the Limits of the Continental Shelf on 24 June 2013

> "demonstrates that Nicaragua's continental margin extends more than 200 nautical miles from the baselines from which the breadth of the territorial sea of Nicaragua is measured, and both (i) traverses an area that lies more than 200 nautical miles from Colombia and also (ii) partly overlaps with an area that lies within 200 nautical miles of Colombia's coast".

The Applicant also maintained that the two States "have not agreed upon a maritime boundary between them in the area beyond 200 nautical miles from the coast of Nicaragua" and that "Colombia has objected to continental shelf claims [from other States] in that area".

As the basis for the jurisdiction of the Court, Nicaragua invoked Article XXXI of the American Treaty on Pacific Settlement (officially known as the "Pact of Bogotá"), signed on 30 April 1948, to which "[b]oth Nicaragua and Colombia are parties". Nicaragua asserted that it was "constrained . . . into taking action upon this matter rather sooner than later in the form of the present application" as, "on 27 November 2012, Colombia gave notice that it denounced as of that date the Pact of Bogotá", and as, "in accordance with Article LVI of the Pact, that denunciation will take effect after one year, so that the Pact remains in force for Colombia until 27 November 2013".

In addition, Nicaragua submitted that

> "the subject-matter of the . . . Application remains within the jurisdiction of the Court established in the case concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)* . . . in as much as the Court did not in its Judgment dated 19 November 2012 definitively determine the question of the delimitation of the continental shelf between Nicaragua and Colombia in the area beyond 200 nautical miles from the Nicaraguan coast, which question was and remains before the Court in that case".

By an Order of 9 December 2013, the Court fixed 9 December 2014 and 9 December 2015 as respective time-limits for the filing of Nicaragua's Memorial and Colombia's Counter-Memorial.

1.128. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*

On 26 November 2013, Nicaragua instituted proceedings against Colombia concerning a dispute in relation to "the violations of Nicaragua's sovereign rights and maritime zones declared by the Court's Judgment of 19 November 2012 [in the case concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)* (see above 1.100)] and the threat of the use of force by Colombia in order to implement these violations".

In its Application, Nicaragua quotes various declarations allegedly made by the highest Colombian authorities since the Court's Judgment of 19 December 2012, culminating in "the enactment of a [Presidential] Decree that openly violated Nicaragua's sovereign rights over its maritime areas in the Caribbean". Nicaragua further claims that these declarations show Colombia's "rejection of the Court's Judgment", and its decision to regard that Judgment as "not applicable". Nicaragua accordingly requests the Court to adjudge and declare that Colombia is in breach of a number of its obligations, in particular the obligation not to use or to threaten to use force, and its obligation not to violate Nicaragua's maritime zones as delimited in the Court's Judgment of 19 November 2012, as well as Nicaragua's sovereign rights and jurisdiction in those zones.

As basis for the jurisdiction of the Court, Nicaragua invokes Article XXXI of the American Treaty on Pacific Settlement signed on 30 April 1948 (the "Pact of Bogotá), to which "[b]oth Nicaragua and Colombia are parties". Nicaragua stresses in that regard that, although Colombia denounced the Pact on 27 November 2012, that denunciation would only take effect, in accordance with Article LVI of the Pact, after one year, "so that the Pact would [cease] to be in force for Colombia after 27 November 2013". Nicaragua further submits, in the alternative, that "the jurisdiction of the Court lies in its inherent power to pronounce on the actions required by its Judgment".

1.129. Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)

On 17 December 2013 Timor-Leste instituted proceedings against Australia with regard to the seizure and subsequent detention "by Agents of Australia of documents, data and other property which belongs to Timor-Leste and/or which Timor-Leste has the right to protect under international law". Timor-Leste contends that these items were seized in the offices of one of its legal advisers in Narrabundah, Australian Capital Territory, allegedly under a warrant issued under Article 25 of the Australian Security Intelligence Organisation Act of 1979. Timor-Leste claims that the items seized include documents and data containing correspondence between the Government of Timor-Leste and its legal advisers relating to a pending arbitration under the 2002 Timor Sea Treaty between Timor-Leste and Australia. As basis for jurisdiction of the Court, Timor-Leste invokes its declaration of 21 September 2012 under Article 36, paragraph 2, of the Statute, and that made by Australian on 22 March 2002 under the same provision.

On 17 December 2013 Timor-Leste also filed a request for the indication of provisions measures in order to protect its rights and to prevent the use of the seized documents and data by Australia against its interests and rights in the pending arbitration and with regard to other matters relating to the Timor Sea and its resources. Timor-Leste further requested the President of the Court to exercise his power under Article 74, paragraph 4, of the Rules of Court.

In a letter dated 18 December 2013, the President of the Court, acting pursuant to Article 74, called on Australia to "act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects, in particular to refrain from any act which might cause prejudice to the rights claimed by the Democratic Republic of Timor-leste in the present proceedings".

The Parties were subsequently informed that the Court would hold hearings on the request for provisional measures presented by Timor-Leste on 20, 21 and 22 January 2014.

Advisory cases

2.1. Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)

From the creation of the United Nations some 12 States had unsuccessfully applied for admission. Their applications were rejected by the Security Council in consequence of a veto imposed by one or other of the States which are permanent members of the Council. A proposal was then made for the admission of all the candidates at the same time. The General Assembly referred the question to the Court. In the interpretation it gave of Article 4 of the Charter of the United Nations, in its Advisory Opinion of 28 May 1948, the Court declared that the conditions laid down for the admission of States were exhaustive and that if these conditions were fulfilled by a State which was a candidate, the Security Council ought to make the recommendation which would enable the General Assembly to decide upon the admission.

2.2 *Competence of the General Assembly for the Admission of a State to the United Nations*

The above Advisory Opinion (see No. 2.1) given by the Court did not lead to a settlement of the problem in the Security Council. A Member of the United Nations then proposed that the word "recommendation" in Article 4 of the Charter should be construed as not necessarily signifying a favourable recommendation. In other words, a State might be admitted by the General Assembly even in the absence of a recommendation — this being interpreted as an unfavourable recommendation — thus making it possible, it was suggested, to escape the effects of the veto. In the Advisory Opinion which it delivered on 3 March 1950, the Court pointed out that the Charter laid down two conditions for the admission of new Members: a recommendation by the Security Council and a decision by the General Assembly. If the latter body had power to decide without a recommendation by the Council, the Council would be deprived of an important function entrusted to it by the Charter. The absence of a recommendation by the Council, as the result of a veto, could not be interpreted as an unfavourable recommendation, since the Council itself had interpreted its own decision as meaning that no recommendation had been made.

2.3 *Reparation for Injuries Suffered in the Service of the United Nations*

As a consequence of the assassination in September 1948, in Jerusalem, of Count Folke Bernadotte, the United Nations Mediator in Palestine, and other members of the United Nations Mission to Palestine, the General Assembly asked the Court whether the United Nations had the capacity to bring an international claim against the State responsible with a view to obtaining reparation for damage caused to the Organization and to the victim. If this question were answered in the affirmative, it was further asked in what manner the action taken by the United Nations could be reconciled with such rights as might be possessed by the State of which the victim was a national. In its Advisory Opinion of 11 April 1949, the Court held that the Organization was intended to exercise functions and rights which could only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon the international plane. It followed that the Organization had the capacity to bring a claim and to give it the character of an international action for reparation for the damage that had been caused to it. The Court further declared that the Organization can claim reparation not only in respect of damage caused to itself, but also in respect of damage suffered by the victim or persons entitled through him. Although, according to the traditional rule, diplomatic protection had to be exercised by the national State, the Organization should be regarded in international law as possessing the powers which, even if they are not expressly stated in the Charter, are conferred upon the Organization as being essential to the discharge of its functions. The Organization may require to entrust its agents with important missions in disturbed parts of the world. In such cases, it is necessary that the agents should receive suitable support and protection. The Court therefore found that the Organization has the capacity to claim appropriate reparation, including also reparation for damage suffered by the victim or by persons entitled through him. The risk of possible competition between the Organization and the victim's national State could be eliminated either by means of a general convention or by a particular agreement in any individual case.

2.4. *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*

This case concerned the procedure to be adopted in regard to the settlement of disputes between the States signatories of the Peace Treaties of 1947 (Bulgaria, Hungary, Romania, on the one hand, and the Allied States, on the other). In the first Advisory Opinion (30 March 1950), the Court stated that the countries, which had signed a Treaty providing an arbitral procedure for the settlement of disputes relating to the interpretation or application of the Treaty, were under an obligation to appoint their representatives to the arbitration commissions prescribed by the Treaty. Notwithstanding this Advisory Opinion, the three States, which had declined to appoint their representatives on the arbitration commissions, failed to modify their attitude. A time-limit was given to them within which to comply with the obligation laid down in the Treaties as they had been interpreted by the Court. After the expiry of the time-limit, the Court was requested to say whether the Secretary-General, who, by the terms of the Treaties, was authorized to appoint the third member of the arbitration commission in the absence of agreement between the parties in respect of this appointment, could proceed to make this appointment, even if one of the parties had failed to appoint its representative. In a further Advisory Opinion of 18 July 1950, the Court replied that this method could not be adopted since it would result in creating a commission of two members, whereas the Treaty provided for a commission of three members, reaching its decision by a majority.

2.5. *International Status of South West Africa*

This Advisory Opinion, given on 11 July 1950, at the request of the General Assembly, was concerned with the determination of the legal status of the Territory, the administration of which had been placed by the League of Nations after the First World War under the Mandate of the Union of South Africa. The League had disappeared, and with it the machinery for the supervision of the Mandates. Moreover, the Charter of the United Nations did not provide that the former mandated Territories should automatically come under trusteeship. The Court held that the dissolution of the League of Nations and its supervisory machinery had not entailed the lapse of the Mandate, and that the mandatory Power was still under an obligation to give an account of its administration to the United Nations, which was legally qualified to discharge the supervisory functions formerly exercised by the League of Nations. The degree of supervision to be exercised by the General Assembly should not, however, exceed that which applied under the Mandates System and should conform as far as possible to the procedure followed in this respect by the Council of the League of Nations. On the other hand, the mandatory Power was not under an obligation to place the Territory under trusteeship, although it might have certain political and moral duties in this connection. Finally, it had no competence to modify the international status of South West Africa unilaterally.

2.6 Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa

Following the preceding Advisory Opinion (see No. 2.5 above) the General Assembly, on 11 October 1954, adopted a special Rule F on voting procedure to be followed by the Assembly in taking decisions on questions relating to reports and petitions concerning the Territory of South West Africa. According to this Rule, such decisions were to be regarded as important questions within the meaning of Article 18, paragraph 2, of the United Nations Charter and would therefore require a two-thirds majority of Members of the United Nations present and voting. In its Advisory Opinion of 7 June 1955, the Court considered that Rule F was a correct application of its earlier Advisory Opinion. It related only to procedure, and procedural matters were not material to the degree of supervision exercised by the General Assembly. Moreover, the Assembly was entitled to apply its own voting procedure and Rule F was in accord with the requirement that the supervision exercised by the Assembly should conform as far as possible to the procedure followed by the Council of the League of Nations.

2.7 Admissibility of Hearings of Petitioners by the Committee on South West Africa

In this Advisory Opinion of 1 June 1956, the Court considered that it would be in accordance with its Advisory Opinion of 1950 on the international status of South West Africa (see No. 2.5 above) for the Committee on South West Africa, established by the General Assembly, to grant oral hearings to petitioners on matters relating to the Territory of South West Africa if such a course was necessary for the maintenance of effective international supervision of the mandated Territory. The General Assembly was legally qualified to carry out an effective and adequate supervision of the administration of the mandated Territory. Under the League of Nations, the Council would have been competent to authorize such hearings. Although the degree of supervision to be exercised by the Assembly should not exceed that which applied under the Mandates System, the granting of hearings would not involve such an excess in the degree of supervision. Under the circumstances then existing, the hearing of petitioners by the Committee on South West Africa might be in the interest of the proper working of the Mandates System.

2.8. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)

On 27 October 1966, the General Assembly decided that the Mandate for South West Africa (see Nos. 2.5-2.7 above and Contentious cases, Nos. 1.35-1.36) was terminated and that South Africa had no other right to administer the Territory. In 1969 the Security Council called upon South Africa to withdraw its administration from the Territory, and on 30 January 1970 it declared that the continued presence of the South African authorities in Namibia was illegal and that all acts taken by the South African Government on behalf of or concerning Namibia after the termination of the Mandate were illegal and invalid; it further called upon all States to refrain from any dealings with the South African Government that were incompatible with that declaration. On 29 July 1970, the Security Council decided to request of the Court an advisory opinion on the legal consequences for States of the continued presence of South Africa in Namibia. In its Advisory Opinion of 21 June 1971, the Court found that the continued presence of South Africa in Namibia was illegal and that South Africa was under an obligation to withdraw its administration immediately. It found that States Members of the United Nations were under an obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts implying recognition of the legality of, or lending support or assistance to, such presence and administration. Finally, it stated that it was incumbent upon States which were not Members of the United Nations to give assistance in the action which had been taken by the United Nations with regard to Namibia.

2.9. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide

In November 1950, the General Assembly asked the Court a series of questions as to the position of a State which attached reservations to its signature of the multilateral Convention on Genocide if other States, signatories of the same Convention, objected to these reservations. The Court considered, in its Advisory Opinion of 28 May 1951, that, even if a convention contained no article on the subject of reservations, it did not follow that they were prohibited. The character of the convention, its purposes and its provisions must be taken into account. It was the compatibility of the reservation with the purpose of the convention which must furnish the criterion of the attitude of the State making the reservation, and of the State which objected thereto. The Court did not consider that it was possible to give an absolute answer to the abstract question put to it. As regards the effects of the reservation in relations between States, the Court considered that a State could not be bound by a reservation to which it had not consented. Every State was therefore free to decide for itself whether the State which formulated the reservation was or was not a party to the convention. The situation presented real disadvantages, but they could only be remedied by the insertion in the convention of an article on the use of reservations. A third question referred to the effects of an objection by a State which was not yet a party to the convention, either because it had not signed it or because it had signed but not ratified it. The Court was of the opinion that, as regards the first case, it would be inconceivable that a State which had not signed the convention should be able to exclude another State from it. In the second case, the situation was different: the objection was valid, but it would not produce an immediate legal effect; it would merely express and proclaim the attitude which a signatory State would assume when it had become a party to the convention. In all the foregoing, the Court adjudicated only on the specific case referred to it, namely, the Genocide Convention.

2.10. *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*

The United Nations Administrative Tribunal was established by the General Assembly to hear applications alleging non-observance of contracts of employment of staff members of the United Nations Secretariat or of the terms of appointment of such staff members. In its Advisory Opinion of 13 July 1954, the Court considered that the Assembly was not entitled on any grounds to refuse to give effect to an award of compensation made by the Administrative Tribunal in favour of a staff member of the United Nations whose contract of service had been terminated without his assent. The Court found that the Tribunal was an independent and truly judicial body pronouncing final judgments without appeal within the limited field of its functions and not merely an advisory or subordinate organ. Its judgments were therefore binding on the United Nations Organization and thus also on the General Assembly.

2.11. *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco*

The Statute of the Administrative Tribunal of the International Labour Organization (ILO) (the jurisdiction of which had been accepted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) for the purpose of settling certain disputes which might arise between the Organization and its staff members) provides that the Tribunal's judgments shall be final and without appeal, subject to the right of the Organization to challenge them. It further provides that in the event of such a challenge, the question of the validity of the decision shall be referred to the Court for an advisory opinion, which will be binding. When four UNESCO staff members holding fixed-term appointments complained of the Director-General's refusal to renew their contracts on expiry, the Tribunal gave judgment in their favour. UNESCO challenged these judgments, contending that the staff members concerned had no legal right to such renewal and that the Tribunal was competent only to hear complaints alleging non-observance of terms of appointment or staff regulations. In its Advisory Opinion of 23 October 1956, the Court said that an administrative memorandum which had announced that all holders of fixed-term contracts would, subject to certain conditions, be offered renewals might reasonably be regarded as binding on the organization and that it was sufficient to establish the jurisdiction of the Tribunal, that the complaints should appear to have a substantial and not merely artificial connection with the terms and provisions invoked. It was therefore the Court's opinion that the Administrative Tribunal had been competent to hear the complaints in question.

2.12. Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization

The Inter-Governmental Maritime Consultative Organization (IMCO) (now the International Maritime Organization (IMO)) comprises, among other organs, an Assembly and a Maritime Safety Committee. Under the terms of Article 28 *(a)* of the Convention for the establishment of the organization, this Committee consists of 14 members elected by the Assembly from the members of the organization having an important interest in maritime safety, "of which not less than eight shall be the largest ship-owning nations". When, on 15 January 1959, the IMCO Assembly, for the first time, proceeded to elect the members of the Committee, it elected neither Liberia nor Panama, although those two States were among the eight members of the organization which possessed the largest registered tonnage. Subsequently, the Assembly decided to ask the Court whether the Maritime Safety Committee had been constituted in accordance with the Convention for the establishment of the organization. In its Advisory Opinion of 8 June 1960, the Court replied to this question in the negative.

2.13. Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)

Article 17, paragraph 2, of the Charter of the United Nations provides that: "The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly." On 20 December 1961, the General Assembly adopted a resolution requesting an advisory opinion on whether the expenditures authorized by it relating to United Nations operations in the Congo and to the operations of the United Nations Emergency Force in the Middle East constituted "expenses of the Organization" within the meaning of this Article of the Charter. The Court, in its Advisory Opinion of 20 July 1962, replied in the affirmative that these expenditures were expenses of the United Nations. The Court pointed out that under Article 17, paragraph 2, of the Charter, the "expenses of the Organization" are the amounts paid out to defray the costs of carrying out the purposes of the Organization. After examining the resolutions authorizing the expenditures in question, the Court concluded that they were so incurred. The Court also analysed the principal arguments which had been advanced against the conclusion that these expenditures should be considered as "expenses of the Organization" and found these arguments to be unfounded.

2.14. *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal*

On 28 April 1972, the United Nations Administrative Tribunal gave, in Judgement No. 158, its ruling on a complaint by a former United Nations staff member concerning the non-renewal of his fixed-term contract. The staff member resorted to the machinery set up by the General Assembly in 1955, and applied for the review of this ruling to the Committee on Applications for Review of Administrative Tribunal Judgements, which decided that there was a substantial basis for the application and requested the Court to give an advisory opinion on two questions arising from the Applicant's contentions. In its Advisory Opinion of 12 July 1973, the Court decided to comply with the Committee's request considering that the review procedure was not incompatible with the general principles of litigation. It expressed the opinion that, contrary to those contentions, the Tribunal had not failed to exercise the jurisdiction vested in it and had not committed a fundamental error in procedure having occasioned a failure of justice.

2.15. *Western Sahara*

On 13 December 1974, the General Assembly requested an advisory opinion on the following questions:

> "I. Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one *(terra nullius)*?"

If the answer to the first question is in the negative,

> "II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?"

In its Advisory Opinion, delivered on 16 October 1975, the Court replied to Question I in the negative. In reply to Question II, it expressed the opinion that the materials and information presented to it showed the existence, at the time of Spanish colonization, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally showed the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. On the other hand, the Court's conclusion was that the materials and information presented to it did not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court did not find any legal ties of such a nature as might affect the application of the General Assembly's 1960 resolution 1514 (XV) — containing the Declaration on the Granting of Independence to Colonial Countries and Peoples — in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the territory.

2.16. *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*

Having considered a possible transfer from Alexandria of the World Health Organization's Regional Office for the Eastern Mediterranean Region, the World Health Assembly in May 1980 submitted a request to the Court for an advisory opinion on the following questions:

> "1. Are the negotiation and notice provisions of Section 37 of the Agreement of 25 March 1951 between the World Health Organization and Egypt applicable in the event that either party to the Agreement wishes to have the Regional Office transferred from the territory of Egypt?
>
> 2. If so, what would be the legal responsibilities of both the World Health Organization and Egypt, with regard to the Regional Office in Alexandria, during the two-year period between notice and termination of the Agreement?"

The Court expressed the opinion that, in the event of a transfer of the seat of the Regional Office to another country, the WHO and Egypt were under mutual obligation to consult together in good faith as to the conditions and modalities of the transfer, and to negotiate the various arrangements needed to effect the transfer with a minimum of prejudice to the work of the Organization and to the interests of Egypt. The party wishing to effect the transfer had a duty, despite the specific period of notice indicated in the 1951 Agreement, to give a reasonable period of notice to the other party, and during this period the legal responsibilities of the WHO and of Egypt would be to fulfil in good faith their mutual obligations as set out above.

2.17. *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal*

A former staff member of the United Nations Secretariat had challenged the Secretary-General's refusal to pay him a repatriation grant unless he produced evidence of having relocated upon retirement. By a judgment of 15 May 1981, the United Nations Administrative Tribunal had found that the staff member was entitled to receive the grant and, therefore, to compensation for the injury sustained through its non-payment. The injury had been assessed at the amount of the repatriation grant of which payment had been refused. The United States Government addressed an application for review of this judgment to the Committee on Applications for Review of Administrative Tribunal Judgements, and the Committee requested an advisory opinion of the Court on the correctness of the decision in question. In its Advisory Opinion of 20 July 1982, the Court, after pointing out that a number of procedural and substantive irregularities had been committed, decided nevertheless to comply with the Committee's request, whose wording it interpreted as really seeking a determination as to whether the Administrative Tribunal had erred on a question of law relating to the provisions of the United Nations Charter, or had exceeded its jurisdiction or competence. As to the first point, the Court said that its proper role was not to retry the case already dealt with by the Tribunal, and that it need not involve itself in the question of the proper interpretation of United Nations Staff Regulations and Rules further than was strictly necessary in order to judge whether the interpretation adopted by the Tribunal had been in contradiction with the provisions of the Charter. Having noted that the Tribunal had only applied what it had found to be the relevant Staff Regulations and Staff Rules made under the authority of the General Assembly, the Court found that the Tribunal had not erred on a question of law relating to the provisions of the Charter. As to the second point, the Court considered that the Tribunal's jurisdiction included the scope of Staff Regulations and Rules and that it had not exceeded its jurisdiction or competence.

2.18 Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal

This case concerns a refusal by the Secretary-General of the United Nations to renew the appointment of a staff member of the Secretariat beyond the date of expiry of his fixed-term contract, the reasons given being that the staff member had been seconded from a national administration, that his secondment had come to an end and that his contract with the United Nations was limited to the duration of the secondment. In a judgment delivered on 8 June 1984, the Administrative Tribunal rejected the staff member's appeal against the Secretary-General's refusal. The staff member in question applied for a review of the judgment to the Committee on Applications for Review of Administrative Tribunal Judgements, which requested the Court to give an advisory opinion on the merits of that decision. In its Advisory Opinion, rendered on 27 May 1987, the Court found that the Administrative Tribunal had not failed to exercise jurisdiction vested in it by not responding to the question whether a legal impediment existed to the further employment in the United Nations of the applicant after the expiry of his fixed-term contract, and that it did not err on any question of law relating to the provisions of the Charter of the United Nations. In that regard, the Court found that the Tribunal had established that there had been "reasonable consideration" of the applicant's case, and by implication that the Secretary-General had not been under a misapprehension as to the effect of secondment, and that the provision of Article 101, paragraph 3, of the Charter must have been present in the mind of the Tribunal when it considered the question. In the view of the Court, those findings could not be disturbed on the ground of error on a question of law relating to the provisions of the Charter.

2.19. Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947

On 2 March 1988, the General Assembly of the United Nations adopted a resolution whereby it requested the Court to give an advisory opinion on the question of whether the United States of America, as a party to the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, was under an obligation to enter into arbitration in accordance with Section 21 of the Agreement. That resolution had been adopted in the wake of the signature and imminent entry into force of a law of the United States, entitled Foreign Relations Authorization Act, Title X of which established certain prohibitions regarding the Palestine Liberation Organization (PLO), *inter alia*, a prohibition

> "to establish or maintain an office, headquarters, premises or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by the Palestine Liberation Organization".

The PLO, in accordance with the Headquarters Agreement, had a Permanent Mission to the United Nations. The Secretary-General of the United Nations invoked the dispute settlement procedure set out in Section 21 of the Agreement and proposed that the negotiations phase of the procedure commence on 20 January 1988. The United States, for its part, informed the United Nations that it was not in a position and was not willing to enter formally into that dispute settlement procedure, in that it was still evaluating the situation and as the Secretary-General had sought assurances that the arrangements in force at the time for the Permanent Observer Mission of the Palestine Liberation Organization would not be curtailed or otherwise affected. On 11 February 1988, the United Nations informed the Department of State that it had chosen its arbitrator and pressed the United States to do the same. The Court, having regard to the fact that the decision to request an advisory opinion had been made "taking into account the time constraint", accelerated its procedure. Written statements were filed, within the time-limits fixed, by the United Nations, the United States of America, the German Democratic Republic and the Syrian Arab Republic, and on 11 and 12 April 1988 the Court held hearings at which the United Nations Legal Counsel took part. The Court rendered its Advisory Opinion on 26 April 1988. It began by engaging in a detailed review of the events that took place before and after the filing of the request for an advisory opinion, in order to determine whether there was, between the United Nations and the United States, a dispute of the type contemplated in the Headquarters Agreement. In so doing, the Court pointed out that its sole task was to determine whether the United States was obliged to enter into arbitration under that Agreement, not to decide whether the measures adopted by the United States in regard to the PLO Observer Mission did or did not run counter to that Agreement. The Court pointed out, *inter alia*, that the United States had stated that "it had not yet concluded that a dispute existed" between it and the United Nations "because the legislation in question had not been implemented". Then, subsequently, referring to "the current dispute over the status of the PLO Observer Mission" it had expressed the view that arbitration would be premature. After initiating litigation in its domestic courts, the United States, in its written statement, had informed the Court of its belief that arbitration would not be "appropriate or timely". After saying that it could not allow considerations as to what might be "appropriate" to prevail over the obligations deriving from Section 21, the Court found that the opposing attitudes of the United Nations and the United States showed the existence of a dispute, whatever the date on which it might be deemed to have arisen. It further qualified that dispute as a dispute concerning the application of the Headquarters Agreement, and then found that, taking into account the United States' attitude, the Secretary-General had in the circumstances exhausted such possibilities of negotiation as were open to him, nor had any "other agreed mode of settlement" within the meaning of Section 21 of the Agreement been contemplated by the United Nations and the United States. The Court accordingly concluded that the United States was bound to respect the obligation to enter into arbitration, under Section 21. In so doing, it recalled the fundamental principle of international law that international law prevailed over domestic law, a principle long endorsed by a body of judicial decisions.

2.20. Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations

On 24 May 1989, the Economic and Social Council of the United Nations (ECOSOC) adopted a resolution whereby it requested the Court to give, on a priority basis, an advisory opinion on the question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations in the case of Mr. Dumitru Mazilu, Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights. Mr. Mazilu, a Romanian national, had been entrusted, by a resolution of the Sub-Commission, with the task of drawing up a report on "Human Rights and Youth" in connection with which the Secretary-General was asked to provide him with all the assistance he might need. Mr. Mazilu was absent from the 1987 session of the Sub-Commission, during which he was to have filed his report, and Romania let it be known that he had been taken into hospital. Mr. Mazilu's mandate finally expired on 31 December 1987, but without his being relieved of the task of Rapporteur that had been assigned to him. Mr. Mazilu was able to get various messages through to the United Nations, in which he complained that the Romanian authorities were refusing him a travel permit. Moreover, those authorities, further to contacts initiated by the Under-Secretary-General for Human Rights at the request of the Sub-Commission, had let it be known that any intervention of the United Nations Secretariat would be considered as interference in Romania's internal affairs. Those authorities subsequently informed the

United Nations of their position with regard to the applicability to Mr. Mazilu of the Convention on the Privileges and Immunities of the United Nations, asserting, *inter alia*, that the Convention did not equate Rapporteurs, whose activities were only occasional, with experts on missions for the United Nations; that they could not, even if granted some of that status, enjoy anything more than functional immunities and privileges; that those privileges and immunities began to apply only at the moment when the expert left on a journey connected with the performance of his mission; and that in the country of which he was a national an expert enjoyed privileges and immunities only in respect of actual activities relating to his mission. The Court rendered its Advisory Opinion on 15 December 1989, and began by rejecting Romania's contention that the Court lacked jurisdiction to entertain the Request. Moreover, the Court did not find any compelling reasons that might have led it to consider it inappropriate to render an opinion. It then engaged in a detailed analysis of Article VI, Section 22, of the Convention, which relates to "Experts on missions for the United Nations". It reached the conclusion, *inter alia*, that Section 22 of the Convention was applicable to persons (other than United Nations officials) to whom a mission had been entrusted by the Organization and who were therefore entitled to enjoy the privileges and immunities provided for in that Section with a view to the independent exercise of their functions; that during the whole period of such missions, experts enjoyed these functional privileges and immunities whether or not they travelled; and that those privileges and immunities might be invoked against the State of nationality or of residence unless a reservation to Section 22 of the Convention had been validly made by that State. Turning to the specific case of Mr. Mazilu, the Court expressed the view that he continued to have the status of Special Rapporteur, that as a consequence he should be regarded as an expert on mission within the meaning of Section 22 of the Convention and that that Section was accordingly applicable in his case.

2.21 *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*

By a letter dated 27 August 1993, filed in the Registry on 3 September 1993, the Director-General of the World Health Organization officially communicated to the Registrar a decision taken by the World Health Assembly to submit to the Court the following question, set forth in resolution WHA46.40 adopted on 14 May 1993:

> "In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution?"

The Court decided that the WHO and the member States of that organization entitled to appear before the Court were likely to be able to furnish information on the question, in accordance with Article 66, paragraph 2, of the Statute. Written statements were filed by 35 States, and subsequently written observations on those written statements were presented by nine States. In the course of the oral proceedings, which took place in October and November 1995, the WHO and 20 States presented oral statements. On 8 July 1996, the Court found that it was not able to give the advisory opinion requested by the World Health Assembly.

It considered that three conditions had to be satisfied in order to found the jurisdiction of the Court when a request for advisory opinion was submitted to it by a specialized agency: the agency requesting the opinion had to be duly authorized, under the Charter, to request opinions of the Court; the opinion requested had to be on a legal question; and that question had to be one arising within the scope of the activities of the requesting agency. The first two conditions had been met. With regard to the third, however, the Court found that although according to its Constitution the WHO is authorized to deal with the health effects of the use of nuclear weapons, or of any other hazardous activity, and to take preventive measures aimed at protecting the health of populations in the event of such weapons being used or such activities engaged in, the question put to the Court in the present case related not to the effects of the use of nuclear weapons on health, but to the legality of the use of such weapons in view of their health and environmental effects.

The Court further pointed out that international organizations did not, like States, possess a general competence, but were governed by the "principle of speciality", that is to say, they were invested by the States which created them with powers, the limits of which were a function of the common interests whose promotion those States entrusted to them. Besides, the WHO was an international organization of a particular kind — a "specialized agency" forming part of a system based on the Charter of the United Nations, which was designed to organize international co-operation in a coherent fashion by bringing the United Nations, invested with powers of general scope, into relationship with various autonomous and complementary organizations, invested with sectorial powers. The Court therefore concluded that the responsibilities of the WHO were necessarily restricted to the sphere of "public health" and could not encroach on the responsibilities of other parts of the United Nations system. There was no doubt that questions concerning the use of force, the regulation of armaments and disarmament were within the competence of the United Nations and lay outside that of the specialized agencies. The Court accordingly found that the request for an advisory opinion submitted by the WHO did not relate to a question arising "within the scope of [the] activities" of that organization.

2.22. *Legality of the Threat or Use of Nuclear Weapons*

By a letter dated 19 December 1994, filed in the Registry on 6 January 1995, the Secretary-General of the United Nations officially communicated to the Registry a decision taken by the General Assembly, by its resolution 49/75 K adopted on 15 December 1994, to submit to the Court, for advisory opinion, the following question: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?" The resolution asked the Court to render its advisory opinion "urgently". Written statements were filed by 28 States, and subsequently written observations on those statements were presented by two States. In the course of the oral proceedings, which took place in October and November 1995, 22 States presented oral statements.

On 8 July 1996, the Court rendered its Advisory Opinion. Having concluded that it had jurisdiction to render an opinion on the question put to it and that there was no compelling reason to exercise its discretion not to render an opinion, the Court found that the most directly relevant applicable law was that relating to the use of force, as enshrined in the United Nations Charter, and the law applicable in armed conflict, together with any specific treaties on nuclear weapons that the Court might find relevant.

The Court then considered the question of the legality or illegality of the use of nuclear weapons in the light of the provisions of the Charter relating to the threat or use of force. It observed, *inter alia*, that those provisions applied to any use of force, regardless of the weapons employed. In addition it stated that the principle of proportionality might not in itself exclude the use of nuclear weapons in self-defence in all circumstances. However at the same time, a use of force that was proportionate under the law of self-defence had, in order to be lawful, to meet the requirements of the law applicable in armed conflict, including, in particular, the principles and rules of humanitarian law. It pointed out that the notions of a "threat" and "use" of force within the meaning of Article 2, paragraph 4, of the Charter stood together in the sense that if the use of force itself in a given case was illegal — for whatever reason — the threat to use such force would likewise be illegal.

The Court then turned to the law applicable in situations of armed conflict. From a consideration of customary and conventional law, it concluded that the use of nuclear weapons could not be seen as specifically prohibited on the basis of that law, nor did it find any specific prohibition of the use of nuclear weapons in the treaties that expressly prohibited the use of certain weapons of mass destruction. The Court then turned to an examination of customary international law to determine whether a prohibition of the threat or use of nuclear weapons as such flowed from that source of law. Noting that the members of the international community were profoundly divided on the matter of whether non-recourse to nuclear weapons over the past 50 years constituted the expression of an *opinio juris*, it did not consider itself able to find that there was such an *opinio juris*. The emergence, as *lex lata*, of a customary rule specifically prohibiting the use of nuclear weapons as such was hampered by the continuing tensions between the nascent *opinio juris* on the one hand, and the still strong adherence to the doctrine of deterrence on the other. The Court then dealt with the question whether recourse to nuclear weapons ought to be considered as illegal in the light of the principles and rules of international humanitarian law applicable in armed conflict and of the law of neutrality. It laid emphasis on two cardinal principles: *(a)* the first being aimed at the distinction between combatants and non-combatants; States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets while *(b)* according to the second of those principles, unnecessary suffering should not be caused to combatants. It follows that States do not have unlimited freedom of choice in the weapons they use. The Court also referred to the Martens Clause, according to which civilians and combatants remained under the protection and authority of the principles of international law derived from established custom, the principles of humanity and the dictates of public conscience.

The Court indicated that, although the applicability to nuclear weapons of the principles and rules of humanitarian law and of the principle of neutrality was not disputed, the conclusions to be drawn from it were, on the other hand, controversial. It pointed out that, in view of the unique characteristics of nuclear weapons, the use of such weapons seemed scarcely reconcilable with respect for the requirements of the law applicable in armed conflict. The Court was led to observe that "in view of the current state of international law and of the elements of fact at its disposal, [it] cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake". The Court added, lastly, that there was an obligation to pursue in good faith and to conclude negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.

2.23. Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights

By a letter dated 7 August 1998, the Secretary-General of the United Nations officially communicated to the Registry Decision 1998/297 of 5 August 1998, by which the Economic and Social Council requested the Court for an advisory opinion on the legal question of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations to a Special Rapporteur of the Commission on Human Rights, and on the legal obligations of Malaysia in that case. The Special Rapporteur, Mr. Cumaraswamy, was facing several lawsuits filed in Malaysian courts by plaintiffs who asserted that he had used defamatory language in an interview published in a specialist journal and who were seeking damages for a total amount of US$112 million. However, according to the United Nations Secretary-General, Mr. Cumaraswamy had been speaking in his official capacity as Special Rapporteur and was thus immune from legal process by virtue of the above-mentioned Convention.

Written statements having been filed by the Secretary-General and by various States, public sittings were held on 7, 8 and 10 December 1998, during which the Court heard oral statements by the representative of the United Nations and three

States, including Malaysia. In its Advisory Opinion of 29 April 1999, having concluded that it had jurisdiction to render such an opinion, the Court noted that a Special Rapporteur entrusted with a mission for the United Nations must be regarded as an expert on mission within the meaning of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations. It observed that Malaysia had acknowledged that Mr. Cumaraswamy was an expert on mission and that such experts enjoyed the privileges and immunities provided for under the Convention in their relations with States parties, including those of which they were nationals. The Court then considered whether the immunity applied to Mr. Cumaraswamy in the specific circumstances of the case. It emphasized that it was the Secretary-General, as the chief administrative officer of the Organization, who had the primary responsibility and authority to assess whether its agents had acted within the scope of their functions and, where he so concluded, to protect those agents by asserting their immunity. The Court observed that, in the case concerned, the Secretary-General had been reinforced in his view that Mr. Cumaraswamy had spoken in his official capacity by the fact that the contentious Article several times explicitly referred to his capacity as Special Rapporteur, and that in 1997 the Commission on Human Rights had extended his mandate, thereby acknowledging that he had not acted outside his functions by giving the interview. Considering the legal obligations of Malaysia, the Court indicated that, when national courts are seised of a case in which the immunity of a United Nations agent is in issue, they must immediately be notified of any finding by the Secretary-General concerning that immunity and that they must give it the greatest weight. Questions of immunity are preliminary issues which must be expeditiously decided by national courts *in limine litis*. As the conduct of an organ of a State, including its courts, must be regarded as an act of that State, the Court concluded that the Government of Malaysia had not acted in accordance with its obligations under international law in the case concerned.

2.24. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*

By resolution ES-10/14, adopted on 8 December 2003 at its Tenth Emergency Special Session, the General Assembly decided to request the Court for an advisory opinion on the following question:

> "What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the Report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?"

The resolution requested the Court to render its opinion "urgently". The Court decided that all States entitled to appear before it, as well as Palestine, the United

Nations and subsequently, at their request, the League of Arab States and the Organization of the Islamic Conference, were likely to be able to furnish information on the question in accordance with Article 66, paragraphs 2 and 3, of the Statute. Written statements were submitted by 45 States and four international organizations, including the European Union. At the oral proceedings, which were held from 23 to 25 February 2004, 12 States, Palestine and two international organizations made oral submissions. The Court rendered its Advisory Opinion on 9 July 2004.

The Court began by finding that the General Assembly, which had requested the advisory opinion, was authorized to do so under Article 96, paragraph 1, of the Charter. It further found that the question asked of it fell within the competence of the General Assembly pursuant to Articles 10, paragraph 2, and 11 of the Charter. Moreover, in requesting an opinion of the Court, the General Assembly had not exceeded its competence, as qualified by Article 12, paragraph 1, of the Charter, which provides that while the Security Council is exercising its functions in respect of any dispute or situation the Assembly must not make any recommendation with regard thereto unless the Security Council so requests. The Court further observed that the General Assembly had adopted resolution ES-10/14 during its Tenth Emergency Special Session, convened pursuant to resolution 377 A (V), whereby, in the event that the Security Council has failed to exercise its primary responsibility for the maintenance of international peace and security, the General Assembly may consider the matter immediately with a view to making recommendations to Member States. Rejecting a number of procedural objections, the Court found that the conditions laid down by that resolution had been met when the Tenth Emergency Special Session was convened, and in particular when the General Assembly decided to request the opinion, as the Security Council had at that time been unable to adopt a resolution concerning the construction of the wall as a result of the negative vote of a permanent member. Lastly, the Court rejected the argument that an opinion could not be given in the present case on the ground that the question posed was not a legal one, or that it was of an abstract or political nature.

Having established its jurisdiction, the Court then considered the propriety of giving the requested opinion. It recalled that lack of consent by a State to its contentious jurisdiction had no bearing on its advisory jurisdiction, and that the giving of an opinion in the present case would not have the effect of circumventing the principle of consent to judicial settlement, since the subject-matter of the request was located in a much broader frame of reference than that of the bilateral dispute between Israel and Palestine, and was of direct concern to the United Nations. Nor did the Court accept the contention that it should decline to give the advisory opinion requested because its opinion could impede a political, negotiated settlement to the Israeli-Palestinian conflict. It further found that it had before it sufficient information and evidence to enable it to give its opinion, and emphasized that it was for the General Assembly to assess the opinion's usefulness. The Court accordingly concluded that there was no compelling reason precluding it from giving the requested opinion.

Turning to the question of the legality under international law of the construction of the wall by Israel in the Occupied Palestinian Territory, the Court first determined the rules and principles of international law relevant to the question posed by the General Assembly. After recalling the customary principles laid down in Article 2, paragraph 4, of the United Nations Charter and in General Assembly resolution 2625 (XXV), which prohibit the threat or use of force and emphasize the illegality of any territorial acquisition by such means, the Court further cited the principle of self-determination of peoples, as enshrined in the Charter and reaffirmed by resolution 2625 (XXV). In relation to international humanitarian law, the Court then referred to the provisions of the Hague Regulations of 1907, which it found to have become part of customary law, as well as to the Fourth Geneva Convention of 1949, holding that these were applicable in those Palestinian territories which, before the armed conflict of 1967, lay to the east of the 1949 Armistice demarcation line (or "Green Line") and were occupied by Israel during that conflict. The Court further established that certain human rights instruments (International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, United Nations Convention on the Rights of the Child) were applicable in the Occupied Palestinian Territory.

The Court then sought to ascertain whether the construction of the wall had violated the above-mentioned rules and principles. Noting that the route of the wall encompassed some 80 per cent of the settlers living in the Occupied Palestinian Territory, the Court, citing statements by the Security Council in that regard in relation to the Fourth Geneva Convention, recalled that those settlements had been established in breach of international law. After considering certain fears expressed to it that the route of the wall would prejudge the future frontier between Israel and Palestine, the Court observed that the construction of the wall and its associated régime created a "fait accompli" on the ground that could well become permanent, and hence tantamount to a *de facto* annexation. Noting further that the route chosen for the wall gave expression *in loco* to the illegal measures taken by Israel with regard to Jerusalem and the settlements and entailed further alterations to the demographic composition of the Occupied Palestinian Territory, the Court concluded that the construction of the wall, along with measures taken previously, severely impeded the exercise by the Palestinian people of its right to self-determination and was thus a breach of Israel's obligation to respect that right.

The Court then went on to consider the impact of the construction of the wall on the daily life of the inhabitants of the Occupied Palestinian Territory, finding that the construction of the wall and its associated régime were contrary to the relevant provisions of the Hague Regulations of 1907 and of the Fourth Geneva Convention and that they impeded the liberty of movement of the inhabitants of the territory as guaranteed by the International Covenant on Civil and Political Rights, as well as their exercise of the right to work, to health, to education and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the Convention on the Rights of the Child. The Court further found that, coupled with the establishment of settlements, the construction of the wall and its associated régime were tending to alter the demographic composition of the Occupied Palestinian Territory, thereby contravening the Fourth Geneva Convention and the relevant Security Council resolutions. The Court then considered the qualifying clauses or provisions for derogation contained in certain humanitarian law and human rights instruments, which might be invoked *inter alia* where military exigencies or the needs of national security or public order so required. The Court found that such clauses were not applicable in the present case, stating that it was not convinced that the specific course Israel had chosen for the wall was necessary to attain its security objectives, and that accordingly the construction of the wall constituted a breach by Israel of certain of its obligations under humanitarian and human rights law. Lastly, the Court concluded that Israel could not rely on a right of self-defence or on a state of necessity in order to preclude the wrongfulness of the construction of the wall, and that such construction and its associated régime were accordingly contrary to international law.

The Court went on to consider the consequences of these violations, recalling Israel's obligation to respect the right of the Palestinian people to self-determination and its obligations under humanitarian and human rights law. The Court stated that Israel must put an immediate end to the violation of its international obligations by ceasing the works of construction of the wall and dismantling those parts of that structure situated within Occupied Palestinian Territory and repealing or rendering ineffective all legislative and regulatory acts adopted with a view to construction of the wall and establishment of its associated régime. The Court further made it clear that Israel must make reparation for all damage suffered by all natural or legal persons affected by the wall's construction. As regards the legal consequences for other States, the Court held that all States were under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction. It further stated that it was for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination be brought to an end. In addition, the Court pointed out that all States parties to the Fourth Geneva Convention were under an obligation, while respecting the Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention. Finally, in regard to the United Nations, and especially the General Assembly and the Security Council, the Court indicated that they should consider what further action was required to bring to an end the illegal situation in question, taking due account of the present Advisory Opinion.

The Court concluded by observing that the construction of the wall must be placed in a more general context, noting the obligation on Israel and Palestine to comply with international humanitarian law, as well as the need for implementation in good faith of all relevant Security Council resolutions, and drawing the attention of the General Assembly to the need for efforts to be encouraged with a view to achieving a negotiated solution to the outstanding problems on the basis of international law and the establishment of a Palestinian State.

2.25. *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*

On 8 October 2008 (resolution 63/3), the General Assembly decided to ask the Court to render an advisory opinion on the following question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"

Thirty-six Member States of the United Nations filed written statements and the authors of the unilateral declaration of independence filed a written contribution. Fourteen States submitted written comments on the written statements of States and on the written contribution of the authors of the declaration of independence. Twenty-eight States and the authors of the unilateral declaration of independence participated in the oral proceedings, which took place from 1 to 11 December 2009.

In its Advisory Opinion delivered on 22 July 2010, the Court concluded that "the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law". Before reaching this conclusion, the Court first addressed the question of whether it possessed jurisdiction to give the advisory opinion requested by the General Assembly. Having established that it did have jurisdiction to render the advisory opinion requested, the Court examined the question, raised by a number of participants, as to whether it should nevertheless decline to exercise that jurisdiction as a matter of discretion. It concluded that, in light of its jurisprudence, there were "no compelling reasons for it to decline to exercise its jurisdiction" in respect of the request.

With regard to the scope and meaning of the question, the Court ruled that the reference to the "Provisional Institutions of Self-Government of Kosovo" in the question put by the General Assembly did not prevent it from deciding for itself whether the declaration of independence had been promulgated by that body or another entity. It also concluded that it was not required by the question posed to decide whether international law conferred a positive entitlement upon Kosovo to declare independence; rather, it had to determine whether a rule of international law prohibited such a declaration.

The Court first sought to determine whether the declaration of independence was in accordance with general international law. It noted that State practice during the eighteenth, nineteenth and early twentieth centuries "points clearly to the conclusion that international law contained no prohibition of declarations of independence". In particular, the Court concluded that "the scope of the principle of territorial integrity is confined to the sphere of relations between States". It also determined that no general prohibition of declarations of independence could be deduced from Security Council resolutions condemning other declarations of independence, because those declarations of independence had been made in the context of an unlawful use of force or a violation of a *jus cogens* norm. The Court thus concluded that the declaration of independence in respect of Kosovo had not violated general international law.

The Court then considered whether the declaration of independence was in accordance with Security Council resolution 1244 of 10 June 1999. It concluded that the object and purpose of that resolution was to establish "a temporary, exceptional legal régime which . . . superseded the Serbian legal order . . . on an interim basis". It then examined the identity of the authors of the declaration of independence. An analysis of the content and form of the declaration, and of the context in which it was made, led the Court to conclude that its authors were not the Provisional Institutions of Self-Government, but rather "persons who acted together in their capacity as representatives of the people of Kosovo outside the framework of the interim administration". The Court concluded that the declaration of independence did not violate resolution 1244 for two reasons. First, it emphasized the fact that the two instruments "operate on a different level": resolution 1244 was silent on the final status of Kosovo, whereas the declaration of independence was an attempt to finally determine that status. Second, it noted that resolution 1244 imposed only very limited obligations on non-State actors, none of which entailed any prohibition of a declaration of independence. Finally, in view of its conclusion that the declaration of independence did not emanate from the Provisional Institutions of Self-Government of Kosovo, the Court held that its authors were not bound by the Constitutional Framework established under resolution 1244, and thus that the declaration of independence did not violate that framework.

Consequently, the Court concluded that the adoption of the declaration of independence had not violated any applicable rule of international law. On 9 September 2010, the General Assembly adopted a resolution in which it acknowledged the content of the advisory opinion of the Court rendered in response to its request (resolution 64/298).

2.26 *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*

In April 2010, the Court received a request for an advisory opinion from the International Fund for Agricultural Development ("IFAD"), a specialized agency of the United Nations, concerning a judgment of the Administrative Tribunal of the International Labour Organization ("ILOAT") rendered on 3 February 2010. In its judgment, the Tribunal had ordered IFAD to pay a former staff member of the Global Mechanism of the United Nations Convention to Combat Desertification — which is housed by IFAD — monetary compensation equivalent to two years salary, as well as moral damages and costs, on account of the abolishment of her post and refusal to renew her contract.

In its Advisory Opinion rendered on 1 February 2012, the Court first considered whether it had jurisdiction to reply to the request and whether or not it should exercise that jurisdiction in the case in question. With respect to its jurisdiction, the Court, citing its earlier opinions, recalled that its power to review a judgment of the ILOAT by reference to Article XII of the Annex to the Statute of the ILOAT was limited to two grounds: either the Tribunal had wrongly confirmed its jurisdiction or the decision was vitiated by a fundamental fault in the procedure followed. As for whether or not it should reply to the request for an opinion, the Court drew attention to the difficulties arising from the review process in respect of ILOAT judgments, both in terms of equality of access to the Court and equality in the proceedings before the Court, since only the body employing the staff member has access to the Court. It found, in particular, that the principle of equality, which follows from the requirements of good administration of justice, should now be understood as including access on an equal basis to available appellate or similar remedies unless an exception may be justified on objective and reasonable grounds. Although the review system in place at the time did not appear effectively to satisfy the modern principle of equality of access to courts and tribunals, the Court, which is not in a position to reform this system, concluded that it need not refuse to reply to the request on such grounds. Furthermore, in accordance with the practice followed in previous review requests, the Court sought to alleviate the unequal position before it of the employing institution and its official arising from provisions of the Court's Statute by deciding that the President of the Fund was to transmit to it any statement setting forth the views of Ms Saez Garcia which she might wish to bring to the attention of the Court, and by deciding that no oral proceedings would be held (since the Court's Statute does not allow individuals to appear in hearings in such cases). The Court thus ruled on these various points, maintaining its concern regarding the inequality of access to the Court but considering nevertheless that, taking account of the circumstances of the case as a whole, and in particular the steps it had taken to reduce the inequality in the proceedings before it, that the reasons that could have led it to decline to give an advisory opinion were not sufficiently compelling as to require it to do so.

As regards the merits of the request, the Court examined and confirmed the validity of the judgment rendered by ILOAT relating to Ms Saez Garcia's contract of employment. In particular, the Court was asked to give its opinion on the competence of the ILOAT to hear the complaint brought against the Fund by Ms Saez Garcia. The former argued that Ms Saez Garcia was a staff member of the Global Mechanism, which was not an organ of the Fund, and consequently that its acceptance of the jurisdiction of the Tribunal did not extend to the applicant's complaint. On this point, the Court ruled that Ms Saez Garcia was an official of the Fund and that the Tribunal was therefore competent *ratione personae* to consider her complaint. Moreover, it considered that Ms Saez Garcia's complaints fell within the category of allegations of non-observance of her terms of appointment or of the provisions of the staff regulations and rules of the Fund, as prescribed by Article II, paragraph 5, of the Statute of the Tribunal. Having concluded that the Tribunal was justified in confirming its jurisdiction *ratione personae* and *ratione materiae*, the Court considered that it need not reply to the other questions raised by the Fund, either because they sought to ascertain the Court's opinion on the reasoning of the Tribunal or on its judgment on the merits, in respect of which the Court has no power of review, or because they constituted nothing more than a repetition of the question on jurisdiction, which the Court had already answered.

The texts of decisions in both contentious and advisory cases are reproduced in the series entitled *Reports of Judgments, Advisory Opinions and Orders (I.C.J. Reports)*.

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Resolution 171 (II) of the United Nations General Assembly

14 November 1947

Need for greater use by the United Nations and its organs of the International Court of Justice

A

The General Assembly,

Considering that it is a responsibility of the United Nations to encourage the progressive development of international law;

Considering that it is of paramount importance that the interpretation of the Charter of the United Nations and the constitutions of the specialized agencies should be based on recognized principles of international law;

Considering that the International Court of Justice is the principal judicial organ of the United Nations;

Considering that it is also of paramount importance that the Court should be utilized to the greatest practicable extent in the progressive development of international law, both in regard to legal issues between States and in regard to constitutional interpretation,

Recommends that organs of the United Nations and the specialized agencies should, from time to time, review the difficult and important points of law within the jurisdiction of the International Court of Justice which have arisen in the course of their activities and involve questions of principle which it is desirable to have settled, including points of law relating to the interpretation of the Charter of the United Nations or the constitutions of the specialized agencies, and, if duly authorized according to Article 96, paragraph 2, of the Charter, should refer them to the International Court of Justice for an advisory opinion.

……

C

The General Assembly,

Considering that, in virtue of Article 1 of the Charter, international disputes should be settled in conformity with the principles of justice and international law;

Considering that the International Court of Justice could settle or assist in settling many disputes in conformity with these principles if, by the full application of the provisions of the Charter and of the Statute of the Court, more frequent use were made of its services,

1. *Draws the attention* of the States which have not yet accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraphs 2 and 5, of the Statute, to the desirability of the greatest possible number of States accepting this jurisdiction with as few reservations as possible;

2. *Draws the attention* of States Members to the advantage of inserting in conventions and treaties arbitration clauses providing, without prejudice to Article 95 of the Charter, for the submission of disputes which may arise from the interpretation or application of such conventions or treaties, preferably and as far as possible to the International Court of Justice;

3. *Recommends* as a general rule that States should submit their legal disputes to the International Court of Justice.

Resolution 3232 (XXIX) of the United Nations General Assembly

12 November 1974

Review of the role of the International Court of Justice

The General Assembly,

Recalling that the International Court of Justice is the principal judicial organ of the United Nations,

Bearing in mind that, in conformity with Article 10 of the Charter of the United Nations, the role of the International Court of Justice remains an appropriate matter for the attention of the General Assembly,

Recalling further that, in accordance with Article 2, paragraph 3, of the Charter, all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

Taking note of the views expressed by Member States during the debates in the Sixth Committee on the question of the review of the role of the International Court of Justice at the twenty-fifth, twenty-sixth, twenty-seventh and twenty-ninth sessions of the General Assembly,

Taking note also of the comments transmitted by Member States and by Switzerland in answer to a questionnaire of the Secretary-General in accordance with General Assembly resolutions 2723 (XXV) of 15 December 1970 and 2818 (XXVI) of 15 December 1971, and of the text of the letter dated 18 June 1971 addressed to the Secretary-General by the President of the International Court of Justice,

Considering that the International Court of Justice has recently amended the Rules of Court, with a view to facilitating recourse to it for the judicial settlement of disputes, *inter alia* by simplifying the procedure, reducing the likelihood of undue delays and costs and allowing for greater influence of parties on the composition of *ad hoc* chambers,

Recalling the increasing development and codification of international law in conventions open for universal participation and the consequent need for their uniform interpretation and application,

Recognizing that the development of international law may be reflected, *inter alia*, by declarations and resolutions of the General Assembly which may to that extent be taken into consideration by the International Court of Justice,

Recalling further the opportunities afforded by the power of the International Court of Justice, under Article 38, paragraph 2, of its Statute, to decide a case *ex aequo et bono* if the parties agree thereto,

1. *Recognizes* the desirability that States study the possibility of accepting, with as few reservations as possible, the compulsory jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute;

2. *Draws the attention* of States to the advantage of inserting in treaties, in cases considered possible and appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties;

3. *Calls upon* States to keep under review the possibility of identifying cases in which use can be made of the International Court of Justice;

4. *Draws the attention* of States to the possibility of making use of chambers as provided in Articles 26 and 29 of the Statute of the International Court of Justice and in the Rules of Court, including those which would deal with particular categories of cases;

5. *Recommends* that United Nations organs and the specialized agencies should, from time to time, review legal questions within the competence of the International Court of Justice that have arisen or will arise during their activities and should study the advisability of referring them to the Court for an advisory opinion, provided that they are duly authorized to do so;

6. *Reaffirms* that recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered as an unfriendly act between States.

Resolution 44/23 of the United Nations General Assembly

17 November 1989

United Nations Decade of International Law

The General Assembly,

Recognizing that one of the purposes of the United Nations is to maintain international peace and security, and to that end to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace,

Recalling the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and the Manila Declaration on the Peaceful Settlement of International Disputes,

Recognizing the role of the United Nations in promoting greater acceptance of and respect for the principles of international law and in encouraging the progressive development of international law and its codification,

Convinced of the need to strengthen the rule of law in international relations,

Stressing the need to promote the teaching, study, dissemination and wider appreciation of international law,

Noting that, in the remaining decade of the twentieth century, important anniversaries will be celebrated that are related to the adoption of international legal documents, such as the centenary of the first International Peace Conference, held at The Hague in 1899, which adopted the Convention for the Pacific Settlement of International Disputes and created the Permanent Court of Arbitration, the fiftieth anniversary of the signing of the Charter of the United Nations and the twenty-fifth anniversary of the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

1. *Declares* the period 1990-1999 as the United Nations Decade of International Law;

2. *Considers* that the main purposes of the Decade should be, *inter alia*:

   (a) To promote acceptance of and respect for the principles of international law;

   (b) To promote means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice;

(c) To encourage the progressive development of international law and its codification;

(d) To encourage the teaching, study, dissemination and wider appreciation of international law;

3. *Requests* the Secretary-General to seek the views of Member States and appropriate international bodies, as well as of non-governmental organizations working in the field, on the programme for the Decade and on appropriate action to be taken during the Decade, including the possibility of holding a third international peace conference or other suitable international conference at the end of the Decade, and to submit a report thereon to the Assembly at its forty-fifth session;

4. *Decides* to consider this question at its forty-fifth session in a working group of the Sixth Committee with a view to preparing generally acceptable recommendations for the Decade;

5. *Also decides* to include in the provisional agenda of its forty-fifth session the item entitled "United Nations Decade of International Law".

Resolution A/RES/61/37 of the United Nations General Assembly

4 December 2006

Commemoration of the sixtieth anniversary of the International Court of Justice

The General Assembly,

Mindful that, in accordance with Article 2, paragraph 3, of the Charter of the United Nations, all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,

Bearing in mind the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations[88] and the Manila Declaration on the Peaceful Settlement of International Disputes[89],

Recognizing the need for universal adherence to and implementation of the rule of law at both the national and international levels,

Recalling that the International Court of Justice is the principal judicial organ of the United Nations, and reaffirming its authority and independence,

Noting that 2006 marks the sixtieth anniversary of the inaugural sitting of the International Court of Justice,

Noting with appreciation the special commemorative event held at The Hague in April 2006 to celebrate the anniversary,

1. *Solemnly commends* the International Court of Justice for the important role that it has played as the principal judicial organ of the United Nations over the past sixty years in adjudicating disputes among States, and recognizes the value of its work;

2. *Expresses its appreciation* to the Court for the measures adopted to operate an increased workload with maximum efficiency;

3. *Stresses* the desirability of finding practical ways and means to strengthen the Court, taking into consideration, in particular, the needs resulting from its workload;

4. *Encourages* States to continue considering recourse to the Court by means available under its Statute, and calls upon States that have not yet done so to consider accepting the jurisdiction of the Court in accordance with its Statute;

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[88] Resolution 2625 (XXV), Annex.

[89] Resolution 37/10, Annex.

5. *Calls upon* States to consider means of strengthening the Court's work, including by supporting the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice on a voluntary basis, in order to enable the Fund to carry on and to strengthen its support to the countries which submit their disputes to the Court;

6. *Stresses* the importance of promoting the work of the International Court of Justice, and urges that efforts be continued through available means to encourage public awareness in the teaching, study and wider dissemination of the activities of the Court in the peaceful settlement of disputes, in view of both its judiciary and advisory functions.

Members and former Members of the ICJ

The following persons have been or are still Members of the Court (the names of current Members appear in bold face; the names of those who have died are preceded by an asterisk):

Name	Country	Period of office
R. Abraham	France	2005-
* R. Ago	Italy	1979-1995
* A. Aguilar-Mawdsley	Venezuela	1991-1995
B. A. Ajibola	Nigeria	1991-1994
* R. J. Alfaro	Panama	1959-1964
A. S. Al-Khasawneh	Jordan	2000-2011
* A. Alvarez	Chile	1946-1955
* F. Ammoun	Lebanon	1965-1976
* E. C. Armand-Ugon	Uruguay	1952-1961
* P. Azevedo	Brazil	1946-1951
* A. H. Badawi	Egypt	1946-1965
* J. Basdevant	France	1946-1964
* R. R. Baxter	United States of America	1979-1980
M. Bedjaoui	Algeria	1982-2001
* C. Bengzon	Philippines	1967-1976
M. Bennouna	Morocco	2006-
D. Bhandari	India	2012-
T. Buergenthal	United States of America	2000-2010
* J. L. Bustamante y Rivero	Peru	1961-1970
A. A. Cançado Trindade	Brazil	2009-
* L. F. Carneiro	Brazil	1951-1955
* F. de Castro	Spain	1970-1979
* R. Córdova	Mexico	1955-1964
* C. De Visscher	Belgium	1946-1952
* H. C. Dillard	United States of America	1970-1979
J. E. Donoghue	United States of America	2010-
N. Elaraby	Egypt	2001-2006
* A. El-Erian	Egypt	1979-1981
* T. O. Elias	Nigeria	1976-1991
A. El-Khani	Syria	1981-1985
* J. Evensen	Norway	1985-1994
* I. Fabela	Mexico	1946-1952
L. Ferrari Bravo	Italy	1995-1997
* Sir Gerald Fitzmaurice	United Kingdom	1960-1973
* C.-A. Fleischhauer	Germany	1994-2003
* I. Forster	Senegal	1964-1982
G. Gaja	Italy	2012-
* S. A. Golunsky	USSR	1952-1953

Name	Country	Period of office
Sir Christopher Greenwood	United Kingdom	2009-
* A. Gros	France	1964-1984
* J. G. Guerrero	El Salvador	1946-1958
G. Guillaume	France	1987-2005
* G. H. Hackworth	United States of America	1946-1961
* G. Herczegh	Hungary	1993-2003
Dame Rosalyn Higgins	United Kingdom	1995-2009
* Hsu Mo	China	1946-1956
* L. Ignacio-Pinto	Benin	1970-1979
* Sir Robert Jennings	United Kingdom	1982-1995
* P. C. Jessup	United States of America	1961-1970
* E. Jiménez de Aréchaga	Uruguay	1970-1979
K. Keith	New Zealand	2006-
* H. Klaestad	Norway	1946-1961
* F. I. Kojevnikov	USSR	1953-1961
* P. H. Kooijmans	Netherlands	1997-2006
* V. M. Koretsky	USSR	1961-1970
A. G. Koroma	Sierra Leone	1994-2012
* S. B. Krylov	USSR	1946-1952
* M. Lachs	Poland	1967-1993
* G. Ladreit de Lacharrière	France	1982-1987
* Sir Hersch Lauterpacht	United Kingdom	1955-1960
* Sir Arnold McNair	United Kingdom	1946-1955
* K. Mbaye	Senegal	1982-1991
* G. Morelli	Italy	1961-1970
* L. M. Moreno Quintana	Argentina	1955-1964
* P. D. Morozov	USSR	1970-1985
* H. Mosler	Federal Republic of Germany	1976-1985
* Nagendra Singh	India	1973-1988
* Ni Zhengyu	China	1985-1994
S. Oda	Japan	1976-2003
* C. D. Onyeama	Nigeria	1967-1976
H. Owada	Japan	2003-
* L. Padilla Nervo	Mexico	1964-1973
G. Parra-Aranguren	Venezuela	1996-2009
* R. S. Pathak	India	1989-1991
* S. Petrén	Sweden	1967-1976
R. Ranjeva	Madagascar	1991-2009
* Sir Benegal Rau	India	1952-1953
* J. E. Read	Canada	1946-1958
F. Rezek	Brazil	1997-2006
* J. M. Ruda	Argentina	1973-1991

Name	Country	Period of office
S. M. Schwebel	United States of America	1981-2000
J. Sebutinde	Uganda	2012-
B. Sepúlveda-Amor	Mexico	2006-
* J. Sette-Camara	Brazil	1979-1988
M. Shahabuddeen	Guyana	1988-1997
Shi Jiuyong	China	1994-2010
B. Simma	Germany	2003-2012
L. Skotnikov	Russian Federation	2006-
* Sir Percy Spender	Australia	1958-1967
* J. Spiropoulos	Greece	1958-1967
* K. Tanaka	Japan	1961-1970
* N. K. Tarassov	Russian Federation	1985-1995
* S. E. D. Tarazi	Syria	1976-1980
P. Tomka	Slovakia	2003-
V. S. Vereshchetin	Russian Federation	1995-2006
* Sir Humphrey Waldock	United Kingdom	1973-1981
C. G. Weeramantry	Sri Lanka	1991-2000
* V. K. Wellington Koo	China	1957-1967
* B. Winiarski	Poland	1946-1967
Xue Hanqin	China	2010-
A. A. Yusuf	Somalia	2009-
* Sir Muhammad Zafrulla Khan	Pakistan	1954-1961 ; 1964-1973
* M. Zoričić	Yugoslavia	1946-1958

Judges *ad hoc* who have sat with the ICJ

Since the institution of the Court, judges *ad hoc* have been chosen in the following cases (unless otherwise indicated, they held the nationality of the appointing party):

Corfu Channel (United Kingdom v. Albania). Albania chose Mr. I. Daxner (Czechoslovakia), who sat upon the Bench when the preliminary objection was heard, and Mr. B. Ečer (Czechoslovakia), who sat when the case was heard on the merits and also for the assessment of amount of compensation.

Asylum (Colombia/Peru), Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru) and *Haya de la Torre (Colombia v. Peru).* Mr. J. J. Caicedo Castilla was chosen by Colombia and Mr. L. Alayza y Paz Soldán by Peru.

Ambatielos (Greece v. United Kingdom). Mr. J. Spiropoulos was chosen by Greece.

Anglo-Iranian Oil Co. (United Kingdom v. Iran). Mr. K. Sandjabi was chosen by Iran.

Nottebohm (Liechtenstein v. Guatemala). Mr. P. Guggenheim (Switzerland) was chosen by Liechtenstein and Mr. C. Garcia Bauer[36] by Guatemala.

Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States of America). Mr. G. Morelli was chosen by Italy.

Right of Passage over Indian Territory (Portugal v. India). Mr. M. Fernandes was chosen by Portugal and the Hon. M. A. C. Chagla by India.

Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden). Mr. J. Offerhaus was chosen by the Netherlands and Mr. F. J. C. Sterzel by Sweden.

Interhandel (Switzerland v. United States of America). Mr. P. Carry was chosen by Switzerland.

Aerial Incident of 27 July 1955 (Israel v. Bulgaria). Mr. Justice Goitein was chosen by Israel and Mr. J. Žourek (Czechoslovakia) by Bulgaria.

Aerial Incident of 27 July 1955 (United States of America v. Bulgaria)[37]. Mr. J. Žourek (Czechoslovakia) was chosen by Bulgaria.

Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua). Mr. R. Ago (Italy) was chosen by Honduras and Mr. F. Urrutia Holguin (Colombia) by Nicaragua.

Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)[38]. Mr. W. J. Ganshof van der Meersch was chosen by Belgium and Mr. F. de Castro by Spain.

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[36] The Government of Guatemala first chose Mr. J. C. Herrera as judge *ad hoc*, then Mr. J. Matos, before choosing Mr. Garcia Bauer.

[37] The case was removed from the List before the Court had occasion to sit.

[38] The case was removed from the List before the Court had occasion to sit.

South West Africa (Ethiopia v. South Africa; Liberia v. South Africa). Sir Louis Mbanefo (Nigeria)[illegible] was chosen by Ethiopia and Liberia and the Hon. J. T. van Wyk by South Africa.

Northern Cameroons (Cameroon v. United Kingdom). Mr. P. Beb a Don was chosen by Cameroon.

Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain). Belgium chose Mr. W. J. Ganshof van der Meersch, who sat upon the Bench when the preliminary objections were heard, and Mr. W. Riphagen (Netherlands), who sat in the second phase. Spain chose Mr. E. C. Armand-Ugon (Uruguay).

North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands). Mr. H. Mosler was chosen by the Federal Republic of Germany and Mr. M. Sorensen (Denmark) by Denmark and the Netherlands.

Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan). Mr. Nagendra Singh was chosen by India.

Nuclear Tests (Australia v. France). Sir Garfield Barwick was chosen by Australia.

Nuclear Tests (New Zealand v. France). Sir Garfield Barwick (Australia) was chosen by New Zealand.

Trial of Pakistani Prisoners of War (Pakistan v. India). Pakistan chose Sir Muhammad Zafrulla Khan, who sat in the proceedings on the request for interim measures up to 2 July 1973, and Mr. Muhammad Yaqub Ali Khan[illegible].

Western Sahara. Mr. A. Boni (Côte d'Ivoire) was chosen by Morocco.

Aegean Sea Continental Shelf (Greece v. Turkey). Mr. M. Stassinopoulos was chosen by Greece.

Continental Shelf (Tunisia/Libyan Arab Jamahiriya). Mr. J. Evensen (Norway) was chosen by Tunisia and Mr. E. Jiménez de Aréchaga (Uruguay) by the Libyan Arab Jamahiriya.

Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America) (case referred to a Chamber). Mr. M. Cohen was chosen by Canada.

Continental Shelf (Libyan Arab Jamahiriya/Malta). Mr. E. Jiménez de Aréchaga (Uruguay) was chosen by the Libyan Arab Jamahiriya. Mr. J. Castañeda (Mexico)

[illegible] The Governments of Ethiopia and Liberia had first chosen as judge *ad hoc* the Hon. J. Chesson, subsequently Sir Muhammad Zafrulla Khan and then Sir Adetokunboh A. Ademola, before choosing Sir Louis Mbanefo.

[illegible] This case was removed from the List before the Court had occasion to hear argument on the question of its jurisdiction.

was chosen by Malta and sat in the proceedings culminating in the Judgment on Italy's Application for permission to intervene. Mr. N. Valticos (Greece) was chosen by Malta to sit when the case was heard on the merits.

Frontier Dispute (Burkina Faso/Republic of Mali) (case referred to a Chamber). Mr. F. Luchaire (France) was chosen by Burkina Faso and Mr. G. M. Abi-Saab (Egypt) by the Republic of Mali.

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Mr. C.-A. Colliard (France) was chosen by Nicaragua.

Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia v. Libyan Arab Jamahiriya)*. Ms S. Bastid (France) was chosen by Tunisia and Mr. E. Jiménez de Aréchaga (Uruguay) by the Libyan Arab Jamahiriya.

Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (case referred to a Chamber). Mr. N. Valticos (Greece) was chosen by El Salvador and Mr. M. Virally (France) was chosen by Honduras. Following the death of Mr. Virally, Mr. S. Torres Bernárdez (Spain) was chosen by Honduras.

Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. *Norway)*. Mr. P. H. Fischer was chosen by Denmark.

Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. *United States of America)*[31]. Mr. M. Aghahosseini was chosen by the Islamic Republic of Iran.

Arbitral Award of 31 July 1989 (Guinea-Bissau v. *Senegal)*. Mr. H. Thierry (France) was chosen by Guinea-Bissau. Following the expiry of Judge Mbaye's term of office on 5 February 1991, Senegal no longer had a judge of its nationality on the Bench. It therefore chose Mr. K. Mbaye to sit as judge *ad hoc*.

Territorial Dispute (Libyan Arab Jamahiriya/Chad). Mr. J. Sette-Camara (Brazil) was chosen by the Libyan Arab Jamahiriya and Mr. G. M. Abi-Saab (Egypt) by Chad.

East Timor (Portugal v. *Australia)*. Mr. A. de Arruda Ferrer-Correia was chosen by Portugal. Following his resignation, on 14 July 1994, Mr. K. J. Skubiszewski (Poland) was chosen by Portugal. Sir Ninian Stephen was chosen by Australia.

Passage through the Great Belt (Finland v. *Denmark)*. Mr. B. Broms was chosen by Finland and Mr. P. H. Fischer by Denmark.

Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. *Bahrain)*. Mr. J. M. Ruda (Argentina) was chosen by Qatar. Following the death of Mr. Ruda, Mr. S. Torres Bernárdez (Spain) was chosen by Qatar. Mr. N. Valticos (Greece) was chosen by Bahrain. He resigned for health reasons as from the end of the jurisdiction and admissibility phase of the case. Bahrain subsequently chose Mr. M. Shahabuddeen (Guyana). After the resignation of Mr. Shahabuddeen, Bahrain chose Mr. Yves L. Fortier (Canada) to sit as judge *ad hoc*.

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[31] The case was removed from the List before the Court had occasion to sit.

Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom). Mr. A. S. El-Kosheri (Egypt) was chosen by the Libyan Arab Jamahiriya. Dame Rosalyn Higgins having recused herself, the United Kingdom chose Sir Robert Jennings to sit as judge *ad hoc*. The latter had been sitting in that capacity in the jurisdiction and admissibility phase of the proceedings.

Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America). Mr. A. S. El-Kosheri (Egypt) was chosen by the Libyan Arab Jamahiriya.

Oil Platforms (Islamic Republic of Iran v. United States of America). Mr. F. Rigaux (Belgium) was chosen by the Islamic Republic of Iran.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro). Sir Elihu Lauterpacht (United Kingdom) was chosen by Bosnia and Herzegovina. Following his resignation, on 22 February 2002, Mr. A. Mahiou (Algeria) was chosen by Bosnia and Herzegovina. Mr. M. Kreća was chosen by Serbia and Montenegro.

Gabčíkovo-Nagymaros Project (Hungary/Slovakia). H.E. K. J. Skubiszewski (Poland) was chosen by Slovakia. Professor Skubiszewski, President of the Iran-US Claims Tribunal and judge *ad hoc* at the Court died on 8 February 2010 while the case was still pending.

Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening). Mr. K. Mbaye (Senegal) was chosen by Cameroon and Prince B. A. Ajibola by Nigeria.

Fisheries Jurisdiction (Spain v. Canada). Mr. S. Torres Bernárdez was chosen by Spain and Mr. M. Lalonde by Canada.

Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) *Case.* Sir Geoffrey Palmer was chosen by New Zealand.

Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections *(Nigeria v. Cameroon).* Prince B. A. Ajibola was chosen by Nigeria and Mr. K. Mbaye (Senegal) by Cameroon.

Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia). Mr. M. Shahabuddeen (Guyana) was chosen by Indonesia. Following the resignation of Mr. Shahabuddeen, Mr. Thomas Franck (United States of America) was chosen by Indonesia. Mr. C. G. Weeramantry (Sri Lanka) was chosen by Malaysia.

Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo). Mr. Mohammed Bedjaoui (Algeria) was chosen by the Republic of Guinea and Mr. Auguste Mampuya Kanunk'A-Tshiabo by the Democratic Republic of the Congo. Following the resignation of Mr. Bedjaoui, on 10 September 2002, Mr. A. Mahiou (Algeria) was chosen by the Republic of Guinea.

Legality of Use of Force (Serbia and Montenegro v. Belgium) (Serbia and Montenegro v. Canada) (Serbia and Montenegro v. France) (Serbia and Montenegro v. Germany) (Serbia and Montenegro v. Italy) (Serbia and Montenegro v. Netherlands) (Serbia and Montenegro v. Portugal) (Yugoslavia v. Spain) (Serbia and Montenegro v. United Kingdom) (Yugoslavia v. United States of America). In all ten cases Serbia and Montenegro [Yugoslavia] chose Mr. M. Kreća; in the case of *Serbia and Montenegro v. Belgium*, Mr. P. Duinslaeger was chosen by Belgium; in the case of *Serbia and Montenegro v. Canada*, Mr. M. Lalonde was chosen by Canada; in the case of *Serbia and Montenegro v. Italy*, Mr. G. Gaja was chosen by Italy and in the case of *Yugoslavia v. Spain*, Mr. S. Torres Bernárdez was chosen by Spain. These judges *ad hoc* sat during the examination of Serbia and Montenegro's requests for the indication of provisional measures. In March 2000 Portugal announced its intention to appoint a judge *ad hoc*. However, the Court decided that, taking into account the presence upon the Bench of judges of British, Dutch and French nationality, the judges *ad hoc* chosen by the respondent States should not sit during the preliminary objections phase. The Court observed that this decision did not in any way prejudice the question whether, if the Court should reject the preliminary objections of the respondents, judges *ad hoc* might sit in subsequent stages of the cases.

Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Burundi) (Democratic Republic of the Congo v. Uganda) (Democratic Republic of the Congo v. Rwanda). In all three cases Mr. Joe Verhoeven (Belgium) was chosen by the Democratic Republic of the Congo; in the case of *Democratic Republic of the Congo v. Burundi*, Mr. J. J. A. Salmon (Belgium) was chosen by Burundi; in the case of *Democratic Republic of the Congo v. Uganda*, Mr. James L. Kateka (Tanzania) was chosen by Uganda; and, in the case of *Democratic Republic of the Congo v. Rwanda*, Mr. C. J. R. Dugard (South Africa) was chosen by Rwanda.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia). Mr. B. Vukas was chosen by Croatia and Mr. M. Kreća by Serbia.

Aerial Incident of 10 August 1999 (Pakistan v. India). Mr. S. S. U. Pirzada was chosen by Pakistan and Mr. B. P. J. Reddy by India.

Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras). Mr. Giorgio Gaja (Italy) was chosen by Nicaragua and Mr. Julio González Campos (Spain) by Honduras. Following the resignation of Mr. González Campos, Honduras chose Mr. S. Torres Bernárdez to sit as judge *ad hoc*.

Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium). Mr. Sayeman Bula-Bula was chosen by the Democratic Republic of the Congo and Ms Christine Van den Wyngaert by Belgium.

Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Preliminary Objections *(Yugoslavia v. Bosnia and Herzegovina).* Mr. Vojin Dimitrijević was chosen by Yugoslavia. Mr. Sead Hodžić was chosen by Bosnia and Herzegovina. Following the resignation of Mr. Hodžić, on 9 April 2002, Bosnia and Herzegovina chose Mr. A. Mahiou (Algeria).

Certain Property (Liechtenstein v. Germany). Mr. Ian Brownlie (United Kingdom) was chosen by Liechtenstein. Following his resignation, Sir Franklin Berman (United Kingdom) was chosen by Liechtenstein. Mr. Carl-August Fleischhauer was chosen by Germany, Judge Simma having recused himself.

Territorial and Maritime Dispute (Nicaragua v. Colombia). Mr. Mohammed Bedjaoui (Algeria) was chosen by Nicaragua and Mr. Yves L. Fortier (Canada) by Colombia. Following the resignation of Mr. Fortier on 7 September 2010, Colombia chose Mr. Jean-Pierre Cot (France). Following the resignation of Mr. Bedjaoui on 2 May 2006, Nicaragua chose Mr. Giorgio Gaja (Italy)[illegible]. Following Mr. Gaja's election as Member of the Court, it chose Mr. T. A. Mensah.

Frontier Dispute (Benin/Niger). Mr. Mohamed Bennouna (Morocco) was chosen by Benin and Mr. Mohammed Bedjaoui (Algeria) by Niger.

Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda). Mr. Jean-Pierre Mavungu Mvumbi-di-Ngoma was chosen by the Democratic Republic of the Congo and Mr. C. J. R. Dugard (South Africa) by Rwanda.

Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) *(El Salvador v. Honduras).* Mr. Felipe H. Paolillo (Uruguay) was chosen by El Salvador and Mr. S. Torres Bernárdez (Spain) by Honduras.

Avena and Other Mexican Nationals (Mexico v. United States of America). Mr. Bernardo Sepúlveda-Amor was chosen by Mexico.

[illegible] In view of that choice, Judge Gaja considered it appropriate for him not to take part in any other proceedings concerning the case.

Certain Criminal Proceedings in France (Republic of the Congo v. France): Mr. Jean-Yves de Cara (France) was chosen by the Republic of the Congo. Judge Abraham having recused himself, Mr. G. Guillaume was chosen by France.

Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore): Mr. C. J. R. Dugard (South Africa) was chosen by Malaysia and Mr. P. Sreenivasa Rao (India) by Singapore.

Maritime Delimitation in the Black Sea (Romania v. Ukraine): Mr. Jean-Pierre Cot (France) was chosen by Romania and Mr. Bernard H. Oxman (United States) by Ukraine.

Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua): Mr. Antônio Augusto Cançado Trindade (Brazil) was chosen as judge *ad hoc* by Costa Rica. Mr. Cançado Trindade was later elected as a Member of the Court, as of 6 February 2009. He continued to sit on that case until its conclusion on 13 July 2009. Mr. Gilbert Guillaume (France) was chosen by Nicaragua.

Pulp Mills on the River Uruguay (Argentina v. Uruguay): Mr. Raul Emilio Vinuesa was chosen by Argentina and Mr. Santiago Torres Bernárdez (Spain) by Uruguay.

Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France): Mr. Abdulqawi Ahmed Yusuf (Somalia) was chosen by Djibouti. Judge Abraham having recused himself under Article 24 of the Statute of the Court, Mr. G. Guillaume was chosen by France.

Maritime Dispute (Peru v. Chile): Mr. G. Guillaume (France) was chosen by Peru. Mr. Francisco Orrego Vicuña was chosen by Chile.

Aerial Herbicide Spraying (Ecuador v. Colombia): Mr. Raul Emilio Vinuesa (Argentina) was chosen by Ecuador. Mr. Jean-Pierre Cot (France) was chosen by Colombia[illegible].

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation): Mr. Giorgio Gaja (Italy) was chosen by Georgia.

Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece): Mr. Budislav Vukas (Croatia) was chosen by Macedonia and Mr. Emmanuel Roucounas was chosen by Greece.

Jurisdictional Immunities of the State (Germany v. Italy): Mr. Giorgio Gaja was chosen by Italy.

Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal): Mr. Philippe Kirsch (Belgium/Canada) was chosen by Belgium and Mr. Serge Sur (France) was chosen by Senegal.

[illegible] The case was removed from the List before the Court had occasion to sit.

Whaling in the Antarctic (Australia v. *Japan: New Zealand intervening).* Ms H. Charlesworth was chosen by Australia.

Frontier Dispute (Burkina Faso/Niger). Mr. Jean-Pierre Cot (France) was chosen by Burkina Faso. Following the resignation of Mr. Cot, Burkina Faso chose Mr. Y. Daudet (France). Niger chose Mr. A. Mahiou (Algeria).

Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. *Nicaragua).* Costa Rica chose Mr. C. J. R. Dugard (South Africa). Nicaragua chose Mr. G. Guillaume (France).

Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand).* Cambodia chose Mr. G. Guillaume (France). Thailand chose Mr. Jean-Pierre Cot (France).

Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. *Costa Rica).* Nicaragua chose Mr. G. Guillaume (France). Costa Rica chose Mr. Bruno Simma (Germany). Following the decision of the Court to join the proceedings in this case and in that concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua),* Mr. Simma resigned.

Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. *Chile).* Bolivia chose Mr. Y. Daudet (France).

Contentious and advisory cases before the ICJ

Explanatory Note

The figures preceding the titles of contentious cases in the following list are explained as follows:

[1] Case concluded by a judgment on the merits or on reparation.
[2] Case concluded by a judgment on an objection or a preliminary point.
[3] Case concluded by an order finding that the Court does not have jurisdiction.
[4] Case concluded by discontinuance before a judgment on the merits.
[5] Current case.

Title	**Dates**
[1] *Corfu Channel (United Kingdom v. Albania)*	1947-1949
[1] *Fisheries (United Kingdom v. Norway)*	1949-1951
[4] *Protection of French Nationals and Protected Persons in Egypt (France v. Egypt)*	1949-1950
[1] *Asylum (Colombia/Peru)*	1949-1950
[1] *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*	1950-1952
[1] *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru)*	1950
[1] *Haya de la Torre (Colombia v. Peru)*	1950-1951
[1] *Ambatielos (Greece v. United Kingdom)*	1951-1953
[2] *Anglo-Iranian Oil Co. (United Kingdom v. Iran)*	1951-1952
[1] *Minquiers and Ecrehos (France/United Kingdom)*	1951-1953
[2] *Nottebohm (Liechtenstein v. Guatemala)*	1951-1955
[2] *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States of America)*	1953-1954
[4] *Electricité de Beyrouth Company (France v. [illegible]ebanon)*	1953-1954
[3] *Treatment in Hungary of Aircraft and Crew of United States of America (United States of America v. Hungary)*	1954
[3] *Treatment in Hungary of Aircraft and Crew of United States of America (United States of America v. USSR)*	1954
[3] *Aerial Incident of 10 March 1953 (United States of America v. Czechoslovakia)*	1955-1956
[3] *Antarctica (United Kingdom v. Argentina)*	1955-1956
[3] *Antarctica (United Kingdom v. Chile)*	1955-1956
[3] *Aerial Incident of 7 October 1952 (United States of America v. USSR)*	1955-1956
[2] *Certain Norwegian Loans (France v. Norway)*	1955-1957
[1] *Right of Passage over Indian Territory (Portugal v. India)*	1955-1960
[1] *Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands v. Sweden)*	1957-1958

Title	Dates
Interhandel (Switzerland v. United States of America)	1957-1959
Aerial Incident of 27 July 1955 (Israel v. Bulgaria)	1957-1959
Aerial Incident of 27 July 1955 (United States of America v. Bulgaria)	1957-1960
Aerial Incident of 27 July 1955 (United Kingdom v. Bulgaria)	1957-1959
Sovereignty over Certain Frontier Land (Belgium/Netherlands)	1957-1959
Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)	1958-1960
Aerial Incident of 4 September 1954 (United States of America v. USSR)	1958
Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)	1958-1961
Compagnie du Port, des Quais et des Entrepôts de Beyrouth and Société Radio-Orient (France v. Lebanon)	1959-1960
Aerial Incident of 7 November 1954 (United States of America v. USSR)	1959
Temple of Preah Vihear (Cambodia v. Thailand)	1959-1962
South West Africa (Ethiopia v. South Africa)	1960-1966
South West Africa (Liberia v. South Africa)	1960-1966
Northern Cameroons (Cameroon v. United Kingdom)	1961-1963
Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain)	1962-1970
North Sea Continental Shelf (Federal Republic of Germany/Denmark)	1967-1969
North Sea Continental Shelf (Federal Republic of Germany/Netherlands)	1967-1969
Appeal relating to the Jurisdiction of the ICAO Council (India v. Pakistan)	1971-1972
Fisheries Jurisdiction (United Kingdom v. Iceland)	1972-1974
Fisheries Jurisdiction (Federal Republic of Germany v. Iceland)	1972-1974
Nuclear Tests (Australia v. France)	1973-1974
Nuclear Tests (New Zealand v. France)	1973-1974
Trial of Pakistani Prisoners of War (Pakistan v. India)	1973
Aegean Sea Continental Shelf (Greece v. Turkey)	1976-1978
Continental Shelf (Tunisia/Libyan Arab Jamahiriya)	1978-1982
United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)	1979-1981
Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America) [case referred to a Chamber]	1981-1984
Continental Shelf (Libyan Arab Jamahiriya/Malta)	1982-1985
Frontier Dispute (Burkina Faso/Republic of Mali) [case referred to a Chamber]	1983-1986

Title	Dates
Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)	1984-1991
Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia v. Libyan Arab Jamahiriya)*	1984-1985
Border and Transborder Armed Actions (Nicaragua v. Costa Rica)	1986-1987
Border and Transborder Armed Actions (Nicaragua v. Honduras)	1986-1992
Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) [case referred to a Chamber][illegible]	1986-1992
Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy) [case referred to a Chamber]	1987-1989
Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)	1988-1993
Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America)	1989-1996
Certain Phosphate Lands in Nauru (Nauru v. Australia)	1989-1993
Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)	1989-1991
Territorial Dispute (Libyan Arab Jamahiriya/Chad)	1990-1994
East Timor (Portugal v. Australia)	1991-1995
Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Senegal)	1991-1995
Passage through the Great Belt (Finland v. Denmark)	1991-1992
Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)	1991-2001
Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)	1992-2003
Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)	1992-2003
Oil Platforms (Islamic Republic of Iran v. United States of America)	1992-2003
Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)	1993-2007
Gabčíkovo-Nagymaros Project (Hungary/Slovakia)	1993-
Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)[illegible]	1994-2002
Fisheries Jurisdiction (Spain v. Canada)	1995-1998

[illegible] The intervention of Nicaragua was admitted on 13 September 1990.

[illegible] The intervention of Equatorial Guinea was admitted on 21 October 1999.

Title	**Dates**
Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand *v.* France) *Case*	1995
Kasikili/Sedudu Island (Botswana/Namibia)	1996-1999
Vienna Convention on Consular Relations (Paraguay v. *United States of America)*	1998
Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon)*	1998-1999
Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)	1998-2002
Ahmadou Sadio Diallo (Republic of Guinea v. *Democratic Republic of the Congo)*	1998-
LaGrand (Germany v. *United States of America)*	1999-2001
Legality of Use of Force (Serbia and Montenegro v. *Belgium)*	1999-2004
Legality of Use of Force (Serbia and Montenegro v. *Canada)*	1999-2004
Legality of Use of Force (Serbia and Montenegro v. *France)*	1999-2004
Legality of Use of Force (Serbia and Montenegro v. *Germany)*	1999-2004
Legality of Use of Force (Serbia and Montenegro v. *Italy)*	1999-2004
Legality of Use of Force (Serbia and Montenegro v. *Netherlands)*	1999-2004
Legality of Use of Force (Serbia and Montenegro v. *Portugal)*	1999-2004
Legality of Use of Force (Yugoslavia v. *Spain)*	1999
Legality of Use of Force (Serbia and Montenegro v. *United Kingdom)*	1999-2004
Legality of Use of Force (Yugoslavia v. *United States of America)*	1999
Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. *Burundi)*	1999-2001
Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. *Uganda)*	1999-
Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. *Rwanda)*	1999-2001
Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. *Serbia)*	1999-
Aerial Incident of 10 August 1999 (Pakistan v. *India)*	1999-2000
Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. *Honduras)*	1999-2007
Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. *Belgium)*	2000-2002
Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Preliminary Objections *(Yugoslavia* v. *Bosnia and Herzegovina)*	2001-2003

Title	Dates
Certain Property (Liechtenstein v. Germany)	2001-2005
Territorial and Maritime Dispute (Nicaragua v. Colombia)	2001-2012
Frontier Dispute (Benin/Niger) [case referred to a Chamber]	2002-2005
Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)	2002-2006
Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) *(El Salvador v. Honduras)* [case referred to a Chamber]	2002-2003
Avena and Other Mexican Nationals (Mexico v. United States of America)	2003-2004
Certain Criminal Proceedings in France (Republic of the Congo v. France)	2003-2010
Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)	2003-2008
Maritime Delimitation in the Black Sea (Romania v. Ukraine)	2004-2009
Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)	2005-2009
Status vis-à-vis the Host State of a Diplomatic Envoy to the United Nations (Commonwealth of Dominica v. Switzerland)	2006
Pulp Mills on the River Uruguay (Argentina v. Uruguay)	2006-2010
Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)	2006-2008
Maritime Dispute (Peru v. Chile)	2008-
Aerial Herbicide Spraying (Ecuador v. Colombia)	2008-2013
Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico *v.* United States of America) *(Mexico v. United States of America)*	2008-2009
Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)	2008-2011
Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)	2008-2011
Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)	2008-2012
Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)	2009-2012
Certain Questions concerning Diplomatic Relations (Honduras v. Brazil)	2009

The intervention of Greece was admitted on 4 July 2011.

Title	**Dates**
Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland)	2009-2011
Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)	2010-
Frontier Dispute (Burkina Faso/Niger)	2010-2013
Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)	2010-
Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia v. Thailand)*	2011-2013
Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)	2011-
Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)	2013-
Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)	2013-
Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)	2013-
Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)	2013-

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By an order dated 6 February 2013 the Court decided that the Declaration of Intervention filed by New Zealand pursuant to Article 63, paragraph 2, of the Statute was admissible.

Advisory proceedings

Title	**Dates**
Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)	1947-1948
Reparation for Injuries Suffered in the Service of the United Nations	1948-1949
Interpretation of Peace Treaties with Bulgaria, Hungary and Romania[1]	1949-1950
Competence of the General Assembly for the Admission of a State to the United Nations	1949-1950
International Status of South West Africa	1949-1950
Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide	1950-1951
Effect of Awards of Compensation Made by the United Nations Administrative Tribunal	1953-1954
Voting Procedure on Questions relating to Reports and Petitions concerning the Territory of South West Africa	1954-1955
Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco	1955-1956
Admissibility of Hearings of Petitioners by the Committee on South West Africa	1955-1956
Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization	1959-1960
Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)	1961-1962
Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)	1970-1971
Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal	1972-1973
Western Sahara	1974-1975
Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt	1980
Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal	1981-1982
Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal	1984-1987
Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947	1988

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[1] In these proceedings the Court rendered two Advisory Opinions dated 30 March 1950 and 18 July 1950, respectively.

Title	**Dates**
Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations	1989
Legality of the Use by a State of Nuclear Weapons in Armed Conflict	1993-1996
Legality of the Threat or Use of Nuclear Weapons	1994-1996
Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights	1998-1999
Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory	2003-2004
Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo	2008-2010
Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development	2010-2012

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